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RICHARD G. KLEINDIENST—RESUMED

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

NOMINATION OF RICHARD G. KLEINDIENST, OF ARIZONA,
TO BE ATTORNEY GENERAL

PART 2

MARCH 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 26, AND 29, 1972

Printed for the use of the Committee on the Judiciary



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RICHARD G. KLEINDIENST

THURSDAY, MARCH 2, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Gurney.

Also present: Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. The committee will be in order.

Mr. Kleindienst, hold up your hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KLEINDIENST. I do.

Mr. McLAREN. I do.

Mr. ROHATYN. I do.

TESTIMONY OF RICHARD G. KLEINDIENST, ACTING ATTORNEY GENERAL, ACCOMPANIED BY RICHARD W. McLAREN, FORMER ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION; FELIX G. ROHATYN, DIRECTOR, INTERNATIONAL TELEPHONE & TELEGRAPH CORP.; AND WALKER B. COMEGYS, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

The CHAIRMAN. This hearing was called at the request of Mr. Kleindienst.

Now, the way the Chair thinks the proper procedure would be is to hear Mr. Kleindienst, Mr. McLaren, and the other gentlemen, and then throw the matter open for questions by whoever on the committee wants to ask them.

Now, Mr. Kleindienst, you may proceed.

Mr. KLEINDIENST. Thank you, Mr. Chairman, and members of the committee.

First I want to express my personal appreciation to the committee for providing me this opportunity at the earliest possible moment to provide the committee the information that I have with respect to some of the charges that have been made in the public press in the last several days.

The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did.

I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were

present at that conversation. And I believe for the record that at any time that I had any meeting with Mr. Rohatyn only he and I were present during those meetings.

He again prefaced his remarks by telling me who he was, his position with the company, that he was not a lawyer, that he was a financier and an economist. He also, I think, by way of introduction, stated that he had no political credentials by which to introduce himself to me. That as a matter of fact, he was an economic adviser to Senator Muskie in his national campaign, and was on his finance committee. He then said that in substance, he was not there to make any legal arguments, and that for the purpose of our discussion he would assume—he did not concede it, but that we could assume that the Department of Justice would be successful in its prosecution of all three of these cases. The record up to that time had not shown great success by the Department of Justice, but he said, let us assume that ultimately you are going to prevail in all of these cases, and that the reason that he wanted to talk to me was not that we were going to succeed, but what would happen if we did, because he came there to tell me the rather drastic economic consequences that would accrue to I.T. & T. and Hartford if I.T. & T. was required to divest that company. He said that among other things, the stockholders of both companies would suffer a loss in excess of \$1 billion in the value of their stock. He indicated to me that as a result of the manner in which they acquired the company and the tax consequences of the divestiture that I.T. & T. would have to pay out \$400 or \$500 million, and that that would have a very drastic effect upon the liquidity of their company. He indicated to me that a lack of liquidity would interfere with their ability to perform some \$200 million or \$300 million of contracts abroad, that would have a certain effect on our balance of payments.

Incidentally, I have been reminded that this meeting on April 20 occurred in 1971 and not 1969. That was an oversight on my part.

That that would interfere with our balance of payments abroad, and deprive an American company of an ability to compete favorably overseas in a particular market. And then I think he terminated his remarks by saying also if they accrued—these consequences to I.T. & T.—taking into account the condition of the economy at that time, that it might have additional repercussions so far as the general stock market was concerned.

He then asked me if I would direct Mr. McLaren, the Assistant Attorney General in the Antitrust Division, to call a meeting of his staff, and any other experts that the Government might want to have with them, and economic experts of the I.T. & T. Corp. for the purpose of permitting I.T. & T. to make this economic presentation to the Government, not a legal argument whether or not as a matter of law the position of the Department was meritorious, but in order for the Government to be able to have this information, and hopefully arrive at some kind of a settlement in these cases calculated to permit I.T. & T. to retain the Hartford Insurance Company and not be required to divest it.

I told Mr. Rohatyn that I would not direct Mr. McLaren or Judge McLaren to do that, but that I would call him and see if he would be willing to do that. I did. Mr. Rohatyn left. I did. And then I called Mr. Rohatyn and said that Mr. McLaren would be willing to have such a meeting.

I do not know who arranged the meeting so far as it was concerned, but thereafter, on April 29, a rather large meeting was held in Mr. McLaren's office. He had several members of his staff, there were two representatives from the Treasury Department. I was there, and I.T. & T. with Mr. Rohatyn had several persons there who were economists or financial experts.

That meeting was a rather long meeting as I recall. Mr. Rohatyn led off the discussion, and that was followed by presentations made by other representatives on behalf of I.T. & T. They gave written material and also verbal opinions, and it all went to this whole question of the economic consequences of divestiture by I.T. & T. of the Hartford Insurance Co. My recollection is that unless there was an incidental question raised by Mr. McLaren or members of his staff or of the Treasury Department people that nobody on behalf of the Government contributed anything to that meeting. My recollection is that I sat there and I said nothing myself.

The meeting adjourned, and the next time I had any conversation with anybody about it was on May 10 when Mr. Rohatyn again came to my office. Incidentally, with respect to these visits to my office by Mr. Rohatyn, they were made by appointment. The appointment was put in my calendar, and in the calendar of my secretary, and he came in the regular entrance of the Department of Justice, identified himself to the guards down there, and they would call up and say it is Mr. Rohatyn, and then he would be shown or asked to come up to my office.

On May 10, he came in to ask me what we were going to do about this economic situation, and I told him that the matter had not been decided by Mr. McLaren, and that his company would be advised when that occurred.

Shortly after the April 29 meeting I had a conference with Mr. McLaren, and I believe he initiated it, in which he said that based upon the information given to him by I.T. & T. at that meeting, and the written data that they had provided, he thought that a very serious question in terms of the economic impact of the divestiture of Hartford had been raised and he felt that the Government had a duty, or he had a duty in the discharge of his obligations to have the advice and counsel of an independent consultant to furnish an opinion as to whether or not the information supplied by I.T. & T. was accurate, and whether or not the projected consequences would accrue. Mr. McLaren made arrangements for such an economic consultant, and after he had done that, and after the May 10 meeting with Mr. Rohatyn, Mr. McLaren called me and came up to my office and I believe that that was on June 17, 1971.

And he said that he had gotten the opinion back from the consultant, that he had arrived at the determination that provided an overall settlement could be made with I.T. & T. with respect to all of their antitrust matters before the Department of Justice, that it would be advisable to work out a settlement with I.T. & T. that would not require the divestiture of the Hartford Insurance Co. He had with him a proposed settlement agreement or outline. He then suggested that he call Mr. Rohatyn in my office and indicate what his decision was, and to read to him his proposed settlement framework in these matters.

I believe that at that meeting Mr. McLaren was in there at his regularly scheduled 8:15 meeting in the morning, so it would have been in the early part of the morning on June 17 that we called Mr. Rohatyn. Mr. McLaren then read to Mr. Rohatyn, over the telephone, his proposed settlement structure. And Mr. Rohatyn—and we used the telephone in a conference phone so that both Mr. McLaren and I could listen to Mr. Rohatyn, and he was also able to hear both of us speak—and Mr. Rohatyn was making notes with respect to the matters given over the telephone, and he asked some questions about it, which Mr. McLaren answered. I believe Mr. McLaren said that if your company is willing to approach this matter on this basis, that you can instruct your attorney to contact me in my office and we will commence settlement negotiations.

Mr. Rohatyn said that he had to communicate that information to his superiors, and that if I.T. & T. wanted to go forward on that basis that their attorneys would contact Mr. McLaren.

I learned that they had agreed to contact Mr. McLaren to discuss settlement on that basis, because on June 29 Mr. Rohatyn again came to my office, and his purpose in coming to my office at that time was to complain about the rather rigid attitude that Mr. McLaren was taking with respect to these settlement negotiations, to complain about the rather punitive nature of the settlement negotiations, and the posture of the Government, and that he felt, in his opinion, they were unreasonable. I told him that I would not inject myself into those settlement negotiations, that that was a problem between the attorneys for I.T. & T. and Mr. McLaren and his staff, and that I would do nothing about it. I did not relate that conversation to Mr. McLaren. I think I indicated to Mr. Rohatyn that I was not going to do it. They had their attorneys working for the Antitrust Division, and that they could work on the basis outlined by Mr. McLaren on that June 17 conversation.

Mr. Rohatyn came into my office again on July 15, again for the same reason, and we had substantially the same kind of a conversation. He was really upset and complaining about the rather hard, stringent, rather inflexible attitude of McLaren and his staff with respect to the settlement negotiations. And I again said the same thing to Mr. Rohatyn, that Mr. McLaren had outlined the basis of the settlement negotiations on June 17, and that was a matter between Mr. McLaren and his staff and the attorneys for his company. I did not communicate this visit to Mr. McLaren or anybody on his staff.

The settlement came about on Saturday, July 31, and Mr. McLaren will go into the steps leading up to that. My recollection is that Mr. McLaren called me on Friday evening to tell me that the Government and I.T. & T. had worked out a settlement in this matter, and that it would be announced on Saturday. I had not talked to Mr. McLaren about any aspect of this matter between June 17, 1971, and that Friday evening on July 30, 1971. I would ordinarily have seen Mr. McLaren some time during that period, but he had been out of the country at the American Bar Association convention in London, and I do not believe he returned until the latter part of July.

But, in any event, I had no further conversations with him. The next time that I saw Mr. Rohatyn was on September 14, 1971, when he came to my office, and that was just a very brief social visit. He

was in town, and the antitrust matter has been settled up, and Mr. Rohatyn and I had a very good personal relationship through all of this, although we kind of disagreed with respect to the attitude of Judge McLaren in antitrust matters. And he dropped by my office, and I think he was there for 1 or 2 minutes on strictly a social basis.

That is, in substance and effect, the relationship that I had with I.T. & T. and the Department of Justice in connection with the antitrust matters of that corporation before our Department. I had no discussions with any other officer or attorney or agent on behalf of I.T. & T. I had no discussions with anybody on Mr. McLaren's staff and the other persons. The only person with whom I ever discussed the matter within the Department was Judge McLaren, who was the person making the recommendation and handling the situation.

Now, Mr. Chairman, based upon the statements that have been made I would like to conclude my remarks by saying categorically and specifically that at no time, until some time in December 1971, did I have any knowledge of any kind, direct or indirect, that the ITT Corp. was being asked to make any kind of a contribution to the city of San Diego or to the Republican Party with respect to the prospective national convention of the Republican Party in San Diego. I never talked to a person on the face of this earth about any aspect of the San Diego Republican National Convention or the I.T. & T. Corp. I never talked to Mr. Mitchell about any aspect of this case. He never mentioned any aspect of this case, and there is not a person in this world who, if they testify truthfully, can come forward and say either that I had knowledge of anything going on with respect to the San Diego convention and the I.T. & T. Corp. or that in any way, under any circumstances, I had anything whatsoever to do with anything that the Department of Justice, the Government of the United States, myself, or Judge McLaren, in connection with these matters.

Now, Mr. Chairman, in order that the committee can have a comprehensive picture of just what occurred in these matters, I would like to ask Judge McLaren to make this statement as he was sworn in to testify, and as I have been, and then have Mr. Rohatyn make his statement, so that the committee will have all of the facts from the three of us. And then myself, and I am sure Judge McLaren and Mr. Rohatyn, will be available to respond to questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Go ahead, Mr. McLaren.

Mr. McLAREN. Mr. Chairman, and members of the committee, I appreciate the opportunity to appear before you today to place on the record the facts concerning the settlement last summer of the three merger cases which the Government then had pending against International Telephone & Telegraph Co.

With me is Mr. Walker B. Comegys, on my right, who is the Acting Assistant Attorney General in charge of the Antitrust Division, and he was my deputy while I was in charge of the division.

I am sure the committee knows I was Assistant Attorney General in charge of the Antitrust Division from January 1969 until February 1972, and I was directly involved in both the filing and the settlement of the three ITT cases.

Now, I may duplicate to some extent some of the things that Mr. Kleindienst has just said, but since some of the materials in the newspapers have tended to reflect on me, I would appreciate the indulgence of the committee to hear my statement.

All three of the cases were filed in 1969, the first arising out of ITT's acquisition of Canteen Corp. of America; the second arising out of ITT's acquisition of Grinnell Corp.; and the third arising out of ITT's acquisition of Hartford Insurance Co.

Prior to filing these cases, I learned that Attorney General Mitchell's former law firm had represented one of the divisions of ITT and that he had disqualified himself from handling any matters which involved ITT. Accordingly, when we in the Antitrust Division were ready to file the first of the three cases—that against Canteen—I took it up with the Deputy Attorney General, Mr. Kleindienst. I might say, incidentally, that prior to that time, our merger policy had been pretty well determined, and it had been set forth in public statements both by the Attorney General and by me. Mr. Kleindienst was, of course, familiar with that policy, and it was he who gave final approval of the three ITT cases. He signed the *Canteen* complaint and later, when we presented the *Grinnell* and *Hartford* complaints, he was the one who signed them.

Neither during this period nor at any time while the cases were pending, nor during the settlement phase, did I discuss these cases with Mr. Mitchell. I occasionally discussed the cases with Mr. Kleindienst—when there was some development I thought he should know about or when I would meet with him to give him a status report on antitrust matters generally. But in these cases, as in other cases while I was in charge of the Antitrust Division, I had the primary responsibility and the broad discretionary authority that went with it—all, of course, within the parameters of policy that had been laid down by the Attorney General.

To complete the background for the settlement discussions, I should add that the *Canteen* case in Chicago and the *Grinnell* case in Connecticut moved rather quickly through the discovery stages, and both went to trial in 1970. The *Grinnell* decision came down in December of 1970—the trial court ruled against the Government and dismissed the complaint. We later filed an appeal on this case to the Supreme Court; and this was pending when we reached our overall settlement.

The *Canteen* decision came down in July of 1971, and the trial court ruled against us here also, finding no violation of the Celler-Kefauver Act and dismissing the complaint. We had the question of appeal in this case under review at the time we reached our settlement.

It is hard for me to place the time when ITT first started to make settlement overtures. ITT had several law firms involved in the defense of the three cases and various attorneys raised the question of possible settlement at various times in 1970. In each case I told counsel that the cases could be settled but that a basic requirement would be divestiture of both Hartford and Grinnell.

In November of 1970, Ephraim Jacobs of the law firm of Hollabaugh & Jacobs of Washington, representing ITT, visited me and proposed that ITT would be willing to divest Canteen, the principal parts of

Grinnell and ITT-Levitt, as well as certain other subsidiaries of ITT which might be agreed upon, provided that they could retain Hartford. Now, Mr. Rashid, I might interpolate, director of the operations of the division, was with me at this meeting. We discussed the Jacobs' proposal with the staff and we agreed to reject it; I called Mr. Jacobs and told him of this and told him that I could see no reason for any such settlement as they had proposed. Jacobs later wrote me a letter generally confirming this discussion.

At some time in the spring of 1971—I believe in March—we received word from ITT representatives that ultimate divestiture of Hartford would be almost a fatal blow to ITT and that they would like to make a presentation to establish this fact and to establish a basis for negotiations for settlement without a Hartford divestiture. As I recall, someone representing ITT gave that message to Mr. Kleindienst, and he relayed it to me. I said that I would be perfectly willing to meet with the ITT people and to hear their presentation. I am sure that I told him that it would have to be a very persuasive presentation because I had made what I regarded as a "hardship" kind of settlement with Ling-Temco-Vought, and I felt that any such settlement should be made only under very exceptional circumstances.

I might add that his previous approaches had been on the theory that I was wrong on the law, and that even if I possibly could win the cases, they were willing to take an injunction against reciprocity, and they would make no more big acquisitions and that we would finish up the case, and I think we would be saved embarrassment was their view.

Later they made their offers on the basis that they were suggesting all of the relief that we were entitled to and all that we could possibly get in court, so this was the first approach that they had made on the basis that a decree requiring them to divest Hartford would destroy the company.

In any event, a date was set for April 29 and the requested meeting was held in my office at the Department of Justice attended by the following representatives of ITT: Howard J. Aibel, senior vice president and general counsel; Felix Rohatyn, director of ITT, member of Lazard et Freres; Henry P. Sailer, Covington & Burling, who was ITT's counsel in the *Grinnell* and *Hartford* cases. Also attending as special consultants to ITT were: Dr. Raymond Saulnier, Columbia University; Prof. Willis J. Winn, Wharton School, University of Pennsylvania. Representing the Government were Mr. Kleindienst, myself, my Deputy, Mr. Walker B. Comegys; our Deputy Director of Operations, Mr. Robert Hummel; Mr. Charles Mahaffie, chief of the trial section; and Mr. Ray Carlson, who was chief of our trial staff on the *Hartford* case. Also present, at my request, were Mr. Bruce MacLaury, Deputy Under Secretary for Monetary Affairs of the Treasury Department, and one of his assistants, Mr. Timothy Green.

The substance of the ITT presentation was that a Hartford divestiture would cost the ITT stockholders approximately \$1 billion, and that ITT would be greatly weakened, particularly in its oversea operations—to the detriment of our balance of payments. The reasons for this are varied but include the fact that ITT paid a \$500 million premium for Hartford, which it could not expect to recover on a forced sale; it would have had to pay a very large capital gain tax on any sale of its Hartford stock; and if it spun off the Hartford

stock to its stockholders in a tax-free reorganization, it would be left with an unmanageable issue of preferred stock.

Following the meeting, we of the Antitrust Division requested the Treasury representatives and an outside consultant—I believe Mr. Kleindienst said economist, I think he was a financial expert—to evaluate the ITT claims.

Shortly after the middle of May, the experts reported that there was substantial support for the arguments made by ITT and that a Hartford divestiture would be indeed very difficult for ITT and, because of changes in the law and in accounting practice, such a divestiture would probably entail a very large loss to ITT stockholders; \$1.2 billion was one estimate, and that was made in a written report. I believe copies have been furnished to members of the committee, along with a copy of my prepared statement.

(The material referred to follows:)

RAMSDEN REPORT

INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.

BACKGROUND

On April 10, 1969 International Telephone and Telegraph Corporation (ITT) and The Hartford Fire Insurance Company (Hartford) entered into an agreement for merger of Hartford with ITT. On August 1, 1969 the Justice Department filed suit asserting that the transaction violated Section 7 of the Clayton Act. The Government's application for an injunction was denied in U.S. District Court on October 21, 1969. In November, 1969 the merger received the approval of the Hartford shareholders; however, on December 13th, the Insurance Commissioner of the State of Connecticut disapproved the merger, suggesting an exchange offer to the Hartford stockholders would have been a more proper method. Thereupon, ITT instituted steps to make a voluntary exchange offer to Hartford stockholders. In June, 1970 ITT acquired a 99.8% interest in Hartford through the issuance of 21,735,702 shares of Cumulative Preferred stock, \$2.25 Convertible Series N for a like number of shares of Hartford. The transaction was non-taxable and treated as a pooling for accounting purposes.

Pending trial of the U.S. Government's suit, ITT is required, based on the October 21, 1969 ruling of Chief Justice William Timbers of the U.S. District Court for Connecticut, to hold the Hartford business separate from the other businesses of ITT.

PURPOSE

The purpose of this paper is to examine the financial and economic consequences of a divestiture of Hartford by ITT. Among the subjects to be considered are:

- (a) The present estimated value of Hartford as a separate entity;
- (b) The effect upon the market price of ITT of a divestiture of Hartford;
- (c) The effect of a divestiture upon ITT's balance sheet, its ability to borrow outside the United States and to maintain its positive balance of payments position;

(d) Finally, a brief examination of the additional impact of a divestiture of Canteen Corporation and Grinnell Corporation, two additional acquisitions which are being challenged through court action by the Federal Government.

HARTFORD

At the time of the exchange offer on May 22, 1970, Hartford's mean bid price in the over-the-counter market was \$38.25. Based on the 22 million shares outstanding, the market valuation of Hartford was \$842 million. ITT, in its exchange offer, for each share of Hartford, was issuing a Series N Preferred stock, convertible into 1.25 shares of ITT. Based on ITT's mean market price on that day of \$39.25, 1.25 shares were worth approximately \$49. Thus, ITT at then market values, was paying \$1.08 billion for Hartford, a premium of approximately 28%. This price was also 222% of the book value of Hartford's stockholders equity at December 31, 1969 of \$486 million.

Hartford is the nation's sixth largest property and casualty insurance group based on net premiums written. Those larger are State Farm, a mutual company, Allstate, a subsidiary of Sears Roebuck, Travelers, Continental Corporation and Aetna Life and Casualty.

On the following page as Exhibit I are some brief data on Hartford for the period 1967-1970 and estimated data for 1971. What the data shows is that Hartford's growth in net premiums written has accelerated in the last few years with increases of 6%, 10%, 12% and 21% in the years 1967-70. Most analysts believe, based on a variety of factors, that Hartford has the capability to realize 14-15% annual increases in net premiums written over the next several years.

Like most casualty companies, Hartford has been experiencing underwriting losses. While conditions in the industry are improving, an underwriting loss of more modest proportions is still expected in 1971. Net investment income has been growing steadily, with increases of 15%, 11% and 14% over the last three years. It is generally expected that Hartford, because of good gains in written premiums and the continued rollover of lower yielding securities into higher yielding ones, can realize net investment growth of approximately 15% per annum over the next few years.

EXHIBIT I

HARTFORD FIRE INSURANCE CO.

	1967	1968	1969	1970	1971 estimate	1971 vs. 1970 (percent)
Net premiums written (million).....	\$819	\$898	\$1,006	\$1,213	-----	-----
Adjusted underwriting loss-pretax (million).....	(11.7)	(5.1)	(15.4)	(13.7)	(8-10)	-----
Net investment income-pretax (million).....	51.7	59.2	65.8	74.9	87	+16
Net operating income after tax (million).....	37.8	45.1	41.1	54.0	63-65	+19
Per share.....	1.72	2.05	1.87	2.45	2.85-2.95	-----
Net realized gains-after taxes (million).....	(3.4)	.8	8.0	33.8	-----	-----
Net income after taxes (million).....	34.4	47.3	50.2	87.9	-----	-----
Price range of common stock.....	40-22	56-20	66-36	52-36	-----	-----
Price/operating earnings per share.....	23-13X	27-10X	35-19X	21-15X	-----	-----

In the first quarter ended March 31, 1971, Hartford's net operating earnings increased approximately 23%. For the year as a whole, an increase of approximately 20% is expected from \$54 million to \$65 million. On a per share basis, based on Hartford's 22 million shares, this results in \$2.85-\$2.95 in operating earnings per share for 1971. In the event underwriting results improve more rapidly, a round figure of \$3.00 per share is achievable in 1971.

In Exhibit II are presented some comparative data on several large casualty and multiple line insurance companies. As indicated, the prices of these stocks have appreciated 60-100% or more from their 1970 lows and most are selling at or near their 1971 highs.

The reasons for this are several. First, 1971 should represent a continuation of cyclical recovery of the industry with many companies posting record earnings. However, in addition, some fundamental changes in the industry suggest that the earnings improvements being realized may be more sustainable and predictable than in the past. These changes are:

(a) An improved regulatory climate. Approximately 20 states accounting for over half of all premiums written have adopted open competition or "file and use" rating laws. Under these laws, companies can file rate increases immediately, subject to regulatory review, rather than waiting months, if not years, for rate relief.

(b) The amount of insurance capacity in certain markets has been reduced. One estimate is that \$1.5 billion of capital has been taken out of fire and casualty companies (mostly in the form of dividends paid to holding companies). Such capital would support net written premiums of \$4.5 billion as compared with the industry's current level of premiums written of \$29 billion. The effect has been to reduce excessive competition in certain markets and for companies to withdraw or radically reduce their exposure to unprofitable markets such as high risk urban areas.

(c) As insurance availability has diminished in certain markets and as rates have increased, there are growing indications that policy holders are becoming increasingly circumspect about the claims they submit to their insurance companies. During the last six months especially, various companies have noted a marked reduction in the number of small claims.

(d) As the rate of inflation subsides, the rate of increase in the cost of claims also has begun to subside. In the automobile insurance area, there also is increasing activity, both at the state and federal level, to require the automobile manufacturers to construct autos so that they can sustain crashes without extensive damage. Over time, developments in car design, such as uniform bumper heights, cars designed to withstand 10 mile per hour crashes, etc. could have a favorable effect upon the cost structure of the casualty insurance industry.

Changes such as those indicated above are beginning to result in improved underwriting results for the industry.

With investment income growing rapidly because of higher yields and good premium growth, many analysts of the industry feel that the predictability of earnings growth is greater than it has been in many years and that companies in the industry can secure somewhat higher multiples than has been true in the past.

With the above as background, what is a reasonable judgment of the market value of Hartford, assuming it were selling as a separate company.

As indicated in Exhibit II, most comparable companies are selling for 13-17x estimated 1971 operating earnings and at some premium to book value.

During much of the 1960's Hartford sold between \$30-\$45 per share. Only with the impetus of the proposed merger with ITT did the stock reach prices in the high \$50's and prices above \$60 per share.

Based on the Company's record of the past few years, a reasonable judgment would be that the Company, on its own, would be valued at between 15 and 17 times 1971 net operating earnings in the market place. One of the reasons Hartford is probably deserving of a multiple at the higher end of the range for the group, is the Company's sizable common stock portfolio. At December 31, 1970, in addition to a bond portfolio of \$1 billion, Hartford had a common stock portfolio valued at market at \$733 million.

EXHIBIT II.—COMPARISON OF SELECTED PROPERTY CASUALTY AND MULTIPLE LINE INSURANCE COMPANIES

	1970 net operating earnings per share	1970 price range	1970 price/ earnings multiple range	1971 estimated net operating EPS	1971 price range to May 14, 1971	May 14, 1971 price to 1971 estimated EPS	Shareholders' equity per share at Dec 31, 1970	May 14, 1971 price to Dec 31, 1970 equity per share (percent)
Aetna Life and Casualty Co.	\$3.57	\$48 to \$33	\$13.4 to \$9.2x	\$4.00	\$63 to \$46	\$14.3x	\$45	127
Travelers Corp.	1.71	\$39 to \$25	\$22.8 to 14.6x	2.25	\$40 to \$32	17.3x	23	170
Continental Corp.	2.63	\$46 to \$28	\$17.5 to 10.6x	3.50	\$50 to \$36	13.3x	49	90
Crum & Forster	3.23	47 to 21	14.6 to 6.5x	4.25	64 to 46	15.1x	48	134
Not available	2.69	38 to 22	14.1 to 8.2x	3.30	50 to 35	14.2x	35	134
St. Paul Co., Inc.	3.21	55 to 36	17.1 to 11.2x	3.70	65 to 53	17.4x	37	174
Safeco Corp.	3.93	62 to 41	15.8 to 10.4x	4.75	77 to 52	16.2x	35	220
Hartford Fire Insurance Co. (based on 22,000,000 shares)	2.45	-----	-----	\$2.85 to \$2.95	-----	-----	24	-----

Until the Accounting Principles Board agrees to some method by which realized and unrealized long-term average gains may be reflected in income, there is no reasonable way to reflect appreciation in a stock portfolio in income. In Exhibit II, for example, the earnings shown are net operating earnings and do not include realized capital gains. Before the merger Hartford took modest amounts of realized gains; in 1970 ITT reported capital gains of \$33.8 million from Hartford. While some analysts have objected to the inclusion of capital gains in ITT's income, because of its relative contribution (\$33.8 million out of \$353 million in 1970) it does not seem to have materially affected ITT's multiple.

As a separate company, Hartford's realized gains from investments would be reported separately and would not be given any real value in the market place. However, since Hartford has, relatively, a larger equity portfolio than most casualty companies, it can be argued that its net operating earnings are somewhat understated. If a greater portion of its assets were invested in bonds, its investment and operating income would be greater. While it is difficult to be precise as to the amount of the understatement, if Hartford invested just its stockholders equity at December 31, 1970 of approximately \$535 million in equities, instead of \$733 million, it would have an incremental \$200 million invested in its bond portfolio. If we assume Hartford could realize 2% in higher after tax yield from bonds than from dividends on stock, the effect would be \$4 million per annum or roughly \$.20 per share. It is in reflection of this modest understatement of earnings that somewhat higher multiple ranges may be appropriate for Hartford.

An additional factor to be considered is the extent of the operating leverage in Hartford. The Company's combined ratio (losses as a percentage of earned premiums; expenses as a percentage of written premiums) has been as follows for the past four years:

	<i>Percent</i>
1967-----	100. 8
1968-----	99. 9
1969-----	100. 6
1970-----	100. 2

On the Company's present base of business a 1% improvement in the combined ratio (from 100% to 99%) would be \$11-12 million pretax or \$5.5 million after tax or \$.25 per share. Thus, a modest improvement in the Company's underwriting experience could have a meaningful impact on earnings.

Using a range of multiples of 15x and 17x and net operating earnings of \$2.85-\$3.00 for 1971 results in marked prices from \$43 to \$51 per share. These prices would represent premiums of 79% and 113% over book value per share at December 31, 1970.

Using a single figure, a reasonable judgement would be that Hartford would sell for \$47 per share in the market place today. On 22 million Hartford shares, this places a total value on Hartford of \$1.034 billion or \$9.30 per share on the approximately 111 million fully diluted shares of ITT. \$1.034 billion represents a 93% premium over Hartford stockholders' equity of \$535 million at December 31, 1970.

ITT

Since Harold S. Geneen became President of ITT in 1959, the Company has achieved a remarkable record. From 1959 through 1970, ITT's earnings per share have grown at an annual rate of 11.6%. Of U.S. industrial companies with 1959 sales of \$750 million or more, only one American corporation has exceeded this earnings per share growth rate—IBM. With the March, 1971 quarter, ITT had achieved increased sales, net income and earnings per share over the same prior year period for 47 consecutive quarters.

In 1959, ITT's revenues were approximately \$750 million and 80% of the Company's earnings came from outside the United States, principally from the manufacture of telecommunications equipment and the operation of telecommunications utilities. Beginning in 1959, a commitment was made to diversify the company both as to business activities and geographical markets. Since 1959 over 100 acquisitions have been consummated. As a result, in 1970 only 19% of the Company's revenues and 15% of the net income came from telecommunications and 65% of net earnings came from United States and Canadian operations.

In understanding ITT, although the Company has been highly successful in consistently recording earnings per share gains of 11-12% annually, it should be pointed out that there is considerable variation from year to year in each principal product group's net income. Each group does not grow at the corporate average, or even close to it, consistently. One analyst has stated that "the key point to

understanding ITT is that it is the international diversification, the business mix between manufacturing and services, and the superior management team that blend to create highly predictable earnings increases of 11-12% annually."

On the following page, as Exhibit III, is a ten year summary of ITT's record, as originally reported in its annual reports. Thus, the price ranges relate to the actual earnings per share for any given year and not to earnings subsequently restated for acquisitions.

EXHIBIT III.—ITT 10 YEAR SUMMARY

	Revenues (millions)	Net income (millions)	Earnings per share	Price range	Price/earnings ratio
Year:					
1961-----	\$931	\$36	\$1.09	\$30-\$22	28-20×
1962-----	1,090	41	1.21	29-17	24-14×
1963-----	1,414	52	1.35	28-21	21-16×
1964-----	1,542	63	1.55	31-26	20-17×
1965-----	1,783	76	1.79	35-24	20-14×
1966-----	2,121	90	2.04	40-29	20-14×
1967-----	2,761	119	2.27	62-36	27-16×
1968-----	4,067	180	2.58	63-45	24-17×
1969-----	5,475	234	2.90	61-46	23-17×
1970-----	6,364	353	3.17	60-31	19-10×
1971 estimate-----			3.50	66-49	19-14×

Over the past eleven years, the price earnings ratio of ITT has ranged from a high of 28x to a low of 14x, if we exclude the low of 10x in 1970 at the bottom of a major market reaction and caused by massive selling of the common as accounts switched to the Convertible Preferred Series N. The average high P/E ratio has been 23x and the average low P/E 17x. At the May 14, 1971 price of \$64.50, the stock was selling for 19x 1971 estimated earnings per share of \$3.50.

What would be the effect on ITT's stock of a divestiture of Hartford? In 1970, excluding ITT's interest in Hartford's earnings of \$87.7 million (\$54.0 million of operating earnings and \$33.7 from realized investment gains), ITT earned approximately \$266 million. Thus, in 1970 Hartford accounted for 25% of ITT's reported earnings per share of \$3.17 or \$.79, and non-Hartford earnings accounted for 75%, or \$2.38 per share. In 1971, again excluding Hartford, and based on the present capitalization, it is reasonable to expect a further 10% increase in non-Hartford earnings per share from the \$2.38 to approximately \$2.62.

The question is, what would those earnings be valued at in the market place. As explained above, ITT has tended to have an average high P/E in recent years of 23x and a low of 17x. At the present time it is selling for 19x estimated earnings for 1971.

A key factor in the ITT multiple is the confidence, based on the last ten years, in the predictability of the earnings increases and conviction that the company will be able to continue to fashion 10% earnings gains because of its international diversification and broad business mix. It seems reasonable to assume that if the Company were required to divest itself of the source of 25% of its earnings in 1970 (and 38% of its 1970 net income from U.S. and Canadian sources) and in addition, one of the presently more dynamic portions of its business mix (Hartford's earnings, including capital gains, were up 31% in the first quarter of 1971) that some of the investor confidence in the Company would be diminished. It seems prudent to assume that in the event of a divestiture of Hartford that there would be some diminution in ITT's multiple—perhaps from 19x, as at present to 17x. Based on estimated earnings, excluding Hartford, of \$2.62 per share in 1971, a 17x multiple would result in a market valuation of ITT, excluding Hartford, of approximately \$44.50 per share.

Adding back the estimated value of Hartford as a separate entity of \$9.30 per ITT share results in a total value of \$9.30 plus \$44.50 or approximately \$54 for ITT and Hartford as separate entities compared with the May 14, 1971 ITT market price of \$64.50. This would represent a \$10.50 per share reduction in value of ITT, or 16%. On the approximately 111 million common shares, or common share equivalents outstanding, it would result in the loss of approximately \$1.2 billion in market value to ITT common and preferred shareholders.

There are some additional practical financial problems involved in a divestiture of Hartford by ITT. Because of its position as the sixth largest casualty company and its estimated market value in excess of \$1 billion, Hartford presents certain problems from a divestiture point of view.

If we assume that a purchaser of Hartford could be neither another insurance company nor a conglomerate similar to ITT itself, there is some question whether suitable purchasers exist. If the Company were sold for cash or debt securities the transaction would presumably be taxable to ITT as well as representing an immense capital burden for the acquiring company. If the sale were for equity securities, the purchaser would have to be extremely large for ITT not to end up with a major portion of the purchaser's equity securities. I think both of the above alternatives would be unattractive from ITT's point of view.

A spin off of Hartford stock to ITT shareholders would be a simpler way of effecting a divestiture. However, this too has problems, in addition to the diminution in values outlined earlier. After spin off, ITT would continue to have outstanding almost 22 million of its Series N Convertible Preferred stock, the annual dividend requirement for which is almost \$50 million annually. The shares cannot be called until September 1, 1976 and only then at \$85 per share. Thus, ITT could only force conversion into the common stock $5\frac{1}{2}$ years hence, assuming ITT common stock, ex Hartford, was selling for some premium over \$68 per share at that time (\$85 divided by 1.25 shares = \$68).

While the figures are not readily available, it is conceivable that the elimination of the Hartford dividend to the ITT parent company, while the parent company's dividend obligation to its Series N Preferred remains outstanding, could result in a sufficient reduction in the ITT parent company cash flow to cause a major cut in ITT's dividend on its common stock. Only in this way would the parent company be able to maintain cash and balance sheet strength so as not to impair parent company credit.

In approving of the affiliation of Hartford with ITT, the Insurance Commissioner for the State of Connecticut placed several conditions upon the merger. Among these conditions was that for ten years Hartford shall not in any year transmit funds to ITT in excess of earnings of Hartford for that year as reported on the basis of generally accepted accounting principles. Also, Hartford cannot make any investments within the ITT system without the consent of the Connecticut Insurance Department.

Thus, in effect, ITT cannot withdraw capital from Hartford to support its other operations. However, if the Hartford acquisition is not of any direct help, because of the above conditions, in financing the growth of ITT, it is of indirect help.

In accordance with generally accepted accounting for financial companies, ITT includes Hartford as an investment on its balance sheet and includes its equity in Hartford's earnings in ITT net income. Hartford's earned premiums are not included in ITT's revenues. The effect of the acquisition of Hartford on ITT's balance sheet was an increase in the asset and stockholder equity accounts for both the parent company and ITT consolidated of approximately \$500 million. Prior to the pooling, at Dec. 31, 1969, ITT's consolidated balance sheet showed \$1.1 billion of long-term debt and \$2.1 billion of equity; after the pooling long-term debt was \$1.1 billion and equity was \$2.6 billion. Thus, ITT consolidated was able to improve its capitalization with long-term debt decreasing from 34% to 30% of the total.

For the parent company's balance sheet the effect was even more dramatic. Prior to the pooling parent company long-term debt was \$122 million versus stockholders equity of \$1.1 billion. After the pooling long-term debt remained the same, but equity increased to \$1.6 billion. Whether the Hartford pooling was the major cause is not known, but prior to ITT's financing in September 1970 of \$150 million of debentures and notes, rating agencies raised the ratings on ITT's debt to "A".

In the event ITT divests itself of Hartford, the balance sheet effects of the pooling would simply be reversed with a diminution of ITT's assets and equity by over \$500 million.

It should be recognized that of ITT's total consolidated debt of approximately \$1.5 billion at 12/31/70, only \$267 million was parent company debt; the great proportion is subsidiary debt. Subsidiaries typically borrow on their own without parent company guaranty. While the divestiture of Hartford would affect the parent company balance sheet, debt capacity and possibly credit rating, it is more difficult to gauge the effect upon subsidiaries and their ability to finance, especially offshore. Obviously, when the strength of the parent is diminished, subsidiaries are somewhat affected, however, to what extent is hard to determine.

Studies by the Office of Foreign Directed Investment, Department of Commerce, have shown that because of its extensive foreign operations, ITT is a very large positive contributor to the U.S. balance of payments. This balance arises from dividends, service fees, royalties, interest and, obviously, exports. It is also aided

to the extent that ITT and its subsidiaries are able to finance foreign operations through foreign borrowings in lieu of expatriating funds or reducing the flow of funds from foreign subsidiaries to the United States.

Hartford is obviously not a major direct factor in ITT's overall favorable balance of payments posture. Hartford's impact is indirect in terms of the balance sheet strength it adds to ITT. To the extent that the divestiture of Hartford affects ITT and its subsidiaries' ability to get credit on favorable terms there would be a longer-term impact upon ITT as an earner of foreign exchange.

A final factor should be mentioned. Several hundred million dollars of ITT stock is held by foreigners. The increase or decrease in such holdings, while representing short-term investment swings, nevertheless affects the balance of payments. If ITT is a less attractive investment, without Hartford, there could be some balance of payments impact from liquidation of foreign holdings.

In addition to Hartford, the Justice Department is also seeking, through court action, the divestiture by ITT of Canteen Corporation and Grinnell Corporation, both acquired in 1969. On December 31, 1970, the U.S. District Court rendered a decision in favor of ITT in the Grinnell litigation; this decision is being appealed by the Justice Department. The Canteen litigation has not yet come to trial.

In 1970 Grinnell earned \$18 million after taxes and Canteen earned \$10 million after taxes. With Hartford, the three companies accounted for 12% of consolidated revenues of ITT and 33% of consolidated net income. While it is not possible here to comment with definition as to the effect on ITT of divestiture of these two companies, including their value as separate companies, the effect on ITT's capitalization, etc., it is reasonable to assume that divestiture would have some impact upon the investment community's view of ITT and the predictability of its earnings. Most likely it would result in further concern as to ITT's ability to manage consistent earnings increases and such concern would probably be reflected in a diminished multiple on the common stock.

CONCLUSION

In conclusion, I think the following statements can be made:

1. Hartford and ITT as separate companies would be valued in the market place at approximately \$54 per present ITT share versus \$64 ½ for the combined company on 5/14/71. This represents a 16% diminution in market value, or almost \$1.2 billion.
2. A spinoff to ITT stockholders would appear to be the only feasible way of divesting Hartford. However, because of the dividend requirements of the Series N Preferred, the elimination of the dividend from Hartford to ITT would probably have a meaningful impact upon the ITT parent company and its liquidity. A logical result would be a cut in the dividend on the ITT common stock.
3. The divestiture of Hartford would have a negative impact upon the ITT parent company and consolidated balance sheets. The result would be a reduction in ITT's incremental parent company debt capacity and possibly credit rating.
4. Finally, to the extent that the changes in (2) and (3) affected ITT's consolidated credit picture, there could be some indirect negative effect upon ITT's balance of payments contributions.

RICHARD J. RAMSDEN,
May 17, 1971.

Mr. McLAREN. I might say that the man that made that report is the same man I used in analyzing the Ling-Temco-Vought situation when we began to be concerned that that company might go down too during the course of our proceedings.

After receiving this report—the report from the Treasury, as I recall, was an oral report—we in the Antitrust Division gave very careful consideration to possible alternative means of settling the three cases, consistent with antitrust objectives, but without the massive adverse impact upon ITT and its shareholders that would attend a divestiture of Hartford.

Ultimately Mr. Hummel—who as I mentioned was the deputy director of operations—and I, with some participation by Messrs. Comegys, Carlson, and Mr. Joseph Widmar, the principal trial attorney on the *Grinnell* case, developed a proposal which was reduced

to writing in the form of a memorandum to Deputy Attorney General Kleindienst dated June 17, 1971.

I presented this memorandum to the Deputy Attorney at a regularly scheduled briefing on June 17, 1971, and he approved. I have a copy of this memorandum with me and it is attached to my prepared statement, which has been furnished to the members of the committee.

(The memorandum referred to follows:)

DEPARTMENT OF JUSTICE,
Washington, D.C., June 17, 1971.

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re Proposed Procedure in ITT Merger Cases

Background.—We have three anti-merger cases pending, against ITT: the *Grinnell* case (sprinkler systems), which was tried and lost in the District Court and is now on appeal to the Supreme Court; the *Canteen* case (vending and food service), which was tried and is now *sub judice*; and the *Hartford Fire Insurance Co.* case, which is set for trial in September.

About six weeks ago, representatives of ITT made a confidential presentation to the Department, the gist of which was that if we are successful in obtaining a divestiture order in the ITT-Hartford Fire Insurance Company case, this will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a \$500 million premium for the Hartford stock but took its assets in at book value in a so-called pooling of interests transaction. It cannot now sell its Hartford stock without (a) suffering a serious loss as opposed to what it paid but, at the same time (b) incurring a large capital gain tax. A "spin-off" to its own shareholders would be a—and probably the only—feasible alternative; however, a spin-off would leave ITT with the large preferred dividend commitment it made in acquiring Hartford (\$50 million a year), but without the earning power which was counted on to cover that commitment. The result, we are told, would be a loss of well over \$1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

We have had a study made by financial experts and they substantially confirm ITT's claims as to the effects of a divestiture order. Such being the case, I gather that we must also anticipate that the impact upon ITT would have a ripple effect—in the stock market and in the economy.

Under the circumstances, I think we are compelled to weigh the need for divestiture in this case—including its deterrent effect as well as the elimination of anti-competitive effects to be expected from divestiture—against the damage which divestiture would occasion. Or, to refine the issue a little more: Is a decree against ITT containing injunctive relief and a divestiture order worth enough more than a decree containing only injunctive relief to justify the projected adverse effects on ITT and its stockholders, and the risk of adverse effects on the stock market and the economy?

I come to the reluctant conclusion that the answer is "no." I say reluctant because ITT's management consummated the Hartford acquisition knowing it violated our antitrust policy; knowing we intended to sue; and in effect representing to the court that he need not issue a preliminary injunction because ITT would hold Hartford separate and thus minimize any divestiture problem if violation were found.

Perhaps equally guilty is the trial judge, who listened sympathetically to defendants' plea that granting our motion for preliminary injunction would cost Hartford stockholders the \$500 million premium ITT was paying for their stock. Obviously, if such a premium is being paid on an unlawful acquisition, the acquiring company may lose that and more if forced to divest, and will so plead if found guilty. This highlights our continuing need for amendment of the Expediting Act to permit us to appeal from District Court orders denying our motions for preliminary injunctions in such cases.

Proposed Procedure.—In order that we do not lose the deterrent we have developed in this field, I propose the following terms of settlement of the ITT cases:

1. *Grinnell*—divestiture. This would require a joint motion in the Supreme Court to refer the case back to the District Court for entry of consent order—which was the procedure the Department followed in *National Steel Corporation* (No. 31, Oct. Term, 1966).

2. *Canteen*—divestiture by consent order.

3. *Hartford*—injunction along lines of *LTV*, including particularly

(a) Prohibition for 10 years of (i) acquisition of any corporation with assets of \$100 million or more; (ii) acquisition of any corporation with assets of \$10 million–100 million without approval of the Department, or permission of the court; and (iii) for a period of an additional five years, prohibition of any acquisition of any corporation with assets over \$10 million except on a showing that it will not tend to lessen competition or create a monopoly.

(b) Prohibition against engaging in systematic reciprocity.

(c) Divestiture of Avis and Levitt.

Finally, in all three cases, I think we should have the right to approve ITT's press releases. We want no great protestations of innocence, government abuse, etc., etc.

I recommend that you approve a program along the lines of the foregoing—allowing, of course, for some leeway in negotiating.

RICHARD W. McLAREN,
Assistant Attorney General,
Antitrust Division.

Approved, 6/17/71.
R. G. K.

Mr. McLAREN. This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of \$100 million or more, or acquisitions of any corporation with assets of more than \$10 million except on a showing that it would not tend to lessen competition, and so forth—that would be a showing by ITT and it would be their burden of proof; prohibition against engaging in systematic reciprocity; and certain other provisions along the lines of our *LTV* decree.

At the conclusion of my meeting with Mr. Kleindienst, I telephoned Mr. Felix Rohatyn from Mr. Kleindienst's office—while he was present—and outlined my proposal to him. This was at approximately 10 o'clock in the morning on June 17. Mr. Rohatyn asked certain questions about points in the proposal and repeated his understanding of the proposal as—it appeared to me—he took notes on it. I told Mr. Rohatyn that if the proposal was acceptable to ITT as a basis for a settlement, he should have ITT's trial counsel get in touch with me. I made clear that if ITT was unwilling to accept the basic outline of the proposal, with negotiation only as to details, I did not care to discuss the matter further.

On the evening of June 17, I informed Messrs. Hummel, Mahaffie and Carlson of the Antitrust Division that our proposal had been communicated to ITT's representative. I did this because Mr. Carlson and Mr. Widmar were going to take the depositions of some of ITT's top executives in New York on June 18, and I felt that they should be fully informed as to the status of the case.

Thereafter Mr. Henry Sailer, of the Covington & Burling law firm, who was trial counsel for ITT in the *Grinnell* and *Hartford* cases, as I said before, telephoned me for an appointment. Judging from the telephone record maintained by my secretary, this apparently was on June 18; we made an appointment for a preliminary discussion on June 24. At the meeting on June 24, Mr. Sailer showed by his comments that he had received a rather full and accurate account of the proposal which we had made to Mr. Rohatyn, and he inquired as to various specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the *Canteen* case under consideration, that we were entering into serious settlement

negotiations. Also, with respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties, that is, those bought or constructed after the main acquisition. With respect to Grinnell, he argued that ITT should be permitted to divest only part of Grinnell, that is, the fire protection business, which had been discussed during the trial of the case. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked about the negotiability of our provision on no acquisitions over \$10 million, and so forth. I told him we would negotiate on details, but that the basic provisions of the proposal were firm.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer, and had had a discussion with him concerning procedure.

On July 1, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

Negotiations between Carlson and Widmar on the one hand and Sailer on the other hand continued through the month of July—a part of which time I think from about July 10 to July 20, I was in London at the ABA meeting—and in the last few days of the month, Carlson and Widmar advised me that the matter was about wound up and that it would be helpful if I would sit in on one or two sessions to cover some final points. On July 30, I agreed that we would accept divestiture of the Fire Protection Division of Grinnell, rather than insisting on full divestiture. I did so because Messrs. Carlson and Widmar, with Mr. Hummel concurring, felt that separating the Fire Protection Division from the rest of Grinnell would be a procompetitive step, putting the rest of the industry on a more even competitive basis with Grinnell, which incidentally was the leader in that particular industry, which had had a competitive advantage by reason of its vertical integration and its broad contacts in the construction business.

There were certain other minor points still in dispute, and our meeting adjourned on the evening of July 30, which was a Friday, for Mr. Sailer to consult with his client. We reconvened our meeting on Saturday morning, July 31, and ironed out the final points. Mr. Sailer then contacted ITT—and I believe they polled the directors for final approval of the proposed settlement by telephone during the day. I then prepared a press release, for immediate distribution, announcing that we had reached an agreement in principle on the terms of consent decrees which, if approved by the courts, would terminate the three cases. This was done in order to head off any further newspaper speculation, and any possible insider trading when the markets reopened on the following Monday.

In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else.

I have with me copies of the three decrees that were entered against ITT, pursuant to our settlement. Essentially, they require three things: (1) a divestiture of firms with approximately \$1 billion of sales—which is one of the biggest, if not the biggest, divestiture in antitrust history; (2) a prohibition against further acquisitions by ITT which might have anticompetitive effects, and (3) a prohibition against use of systematic reciprocity by any of the ITT companies. I am responsible for that settlement and I stand fully behind it. In my professional opinion, it is an excellent settlement from the Government's standpoint not only as a matter of disposition of this litigation but for its overall impact in promoting compliance with the antitrust laws in deterring anticompetitive mergers.

The CHAIRMAN. Mr. Rohatyn.

Mr. ROHATYN. Mr. Chairman, I thank you for the opportunity to appear in front of you and your Committee.

My name is Felix G. Rohatyn. For the past 12 years I have been a general partner in the investment banking firm of Lazard Freres & Co., and since 1968 have been a director of International Telephone and Telegraph Corp.

I am open to the committee's questions concerning my role in the settlement of antitrust litigation brought by the Justice Department against ITT, but would like to begin by describing the nature of discussions in which I participated with Justice Department officials.

It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy—

Senator HART. Mr. Chairman, I wonder if the witness could proceed more slowly. We do not have a copy of his statement.

Mr. ROHATYN. I am sorry, Senator Hart.

The CHAIRMAN. Do you have extra copies of your statement?

Mr. ROHATYN. Yes, sir. I can get them for you right now, sir, if you like.

The CHAIRMAN. Let us have order. Proceed, sir.

Mr. ROHATYN. It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy transcending both the narrow scope of traditional antitrust philosophy and the narrow interest of ITT. Several points were involved, including possible United States balance of payments effects and government policy toward preserving the underlying strength of domestic companies competing overseas. In addition, as chairman of the New York Stock Exchange Surveillance Committee during that period of financial crisis, I was concerned that so massive a divestiture might unsettle our securities markets, and with possible impact on some financial organizations.

Early in April of 1971, I was asked by Mr. Harold Geneen and by our counsel to prepare a comprehensive treatment of these issues for presentation at the Department of Justice. I was thought qualified in these areas as an economic and financial specialist. Since the policy considerations to be raised ranged beyond antitrust enforcement policy, and because Attorney General Mitchell had disqualified himself, I met first with Deputy Attorney General Richard Kleindienst, to outline our thinking in general terms. On April 20, 1971, Mr. Kleindienst directed that a full presentation be made to Mr. McLaren.

This we did late in April, at a meeting chaired by Mr. McLaren and attended by Mr. Kleindienst, several Antitrust Division staff members, ITT counsel, and Mr. Bruce MacLaury, then Treasury's Deputy Under Secretary for Monetary Affairs. Two distinguished experts aided in the presentation—

The CHAIRMAN. Speak a little louder now.

Mr. ROHATYN. Mr. Willis Winn, then dean of the Wharton School and now president of the Cleveland Federal Reserve Bank, and Dr. Raymond Saulnier, a professor at Columbia University who chaired President Eisenhower's Council of Economic Advisers. We left our supportive documentation for review, supplemented by a letter to Mr. McLaren sent several days later.

My second significant involvement came 2 months later, June 17, after Mr. McLaren had completed a memorandum detailing the Antitrust Division's recommendation with respect to a proposed negotiation of settlement. In a three-way telephone conversation, Mr. McLaren and Mr. Kleindienst informed me of its content, which I transmitted to Mr. Geneen after expressing my great disappointment. The Antitrust Division had concluded, after review of our economic policy arguments, that ITT might be allowed to retain Hartford Fire if it were to divest Grinnell, Canteen, Avis, and Levitt while limiting certain types of acquisitions and practices in future. It should be noted that Avis and Levitt previously had not been the subject of any antitrust litigation for asset values subject to divestment. Shortly after my formal presentation to Mr. McLaren and staff, I asked Mr. Kleindienst the status of review. He told me that Mr. McLaren was studying our documentation seriously. I met with Mr. Kleindienst twice following submission of Mr. McLaren's recommendation, once to reiterate our broad policy concerns over so large a divestment and once to state that ITT saw no progress in negotiations.

Mr. Kleindienst twice said that efforts to negotiate a settlement would simply have to run their course, and that Mr. McLaren was in full charge.

Every meeting was on the record. No meeting or telephone conversation was held in a covert or surreptitious manner. There was no hint of any favor offered or sought.

When the agreement was finally reached, I felt that a negotiation had run its normal course, with due allowance for the additional time required and tension generated by the extraordinary complexity and financial import of the matters involved. It was always clear to me that Mr. McLaren was making the decisions, approved on his recommendation by Mr. Kleindienst, and that he had negotiated the terms with ITT counsel.

This summarizes my participation in and my view of these discussions. I will be happy to give you any details in a few minutes. Let me now turn to the ITT Sheraton-San Diego commitment.

Last Sunday evening, February 27, 1972, I was at Kennedy International Airport awaiting an outbound flight. I was talking with my children on the telephone and was told that Mr. Hume had called from Washington asking urgently that I speak with him. I didn't know who Mr. Hume was but returned his call from the airport. He identified himself as an associate of Mr. Jack Anderson, then read a

memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating \$1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. McLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. McLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a \$400,000 contribution from ITT to the city of San Diego?

Mr. McLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. McLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

when they offered me the job. I made three conditions: that we would have a vigorous antitrust program; that we would follow my beliefs with regard to what the Supreme Court cases said on conglomerate mergers, and the restructuring of the industry that I thought was coming about in an almost idiotic way; and third, that we would decide all matters on the merits, there would be no political decision.

The CHAIRMAN. Now, is that correct in this case?

Mr. McLAREN. That is correct in this case, absolutely. I might add that the Attorney General and Mr. Kleindienst lived up to their commitment.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. As I construe your testimony, Judge McLaren, Mr. Kleindienst did not actively participate in the negotiation of the settlement at all?

Mr. McLAREN. All Mr. Kleindienst did was arrange that one meeting, as far as I am concerned. And during the course of that meeting, when ITT makes its presentation, I was the chairman of the meeting. Mr. Kleindienst sat off on my left, and listened, so far as I recall, and, well, none of us had much to say, but he did not do really anything in any stage of the negotiations except arrange for that one meeting and approve my proposal for settling the thing after I became convinced that the 250-odd-thousand shareholders of ITT would suffer more than a \$1 billion loss if we proceeded and were successful in forcing divestiture of Hartford.

Senator ERVIN. Did he make any suggestion to you as to what the details of the negotiations should be, or what the details of the settlement should be?

Mr. McLAREN. He did not, and I did not even keep him informed as to what we were doing in the negotiations until—I think he is probably right—I telephoned him the night before we actually put the thing out and said I think that they are going to cave in on the last couple of points and we will probably announce it tomorrow.

The CHAIRMAN. And that was the course you usually followed to keep him advised of matters in your department?

Mr. McLAREN. Matters of major importance, yes, sir.

Senator ERVIN. I understand from the testimony that has been given that Attorney General Mitchell absolutely disqualified himself from any connection with these suits and proposed suits, and with the negotiations on the settlement, on the grounds that his firm at one time had represented one of the affiliates of ITT?

Mr. McLAREN. Yes, sir, that is correct.

Senator ERVIN. In other words, your testimony is that you and the members of the Antitrust Division staff conducted the investigations, and that the decision of the Government was based solely on the opinions which you and the members of your staff in the Antitrust Division had after considering all of the matters involved, and all of the implications of those matters?

Mr. McLAREN. That is right, sir.

Senator ERVIN. Now, Judge, I practiced law a long time, and I have participated in compromises in many cases, never one of any great magnitude, but my experience is that when people settle litigation they do so for approximately the same reason that Hamlet stated in his soliloquy: they are uncertain as to what the courts are going to

decide, and they take the ills they know of rather than fly to those they do not. Is that not true?

Mr. McLAREN. Yes, sir.

Senator ERVIN. And any kind of a compromise of litigation or prospective litigation is necessarily based upon that theory, that the parties concede certain things in return for certain concessions, and they do so actuated by the fact that nobody knows exactly? I think this would be particularly true in the antitrust field where everything, particularly to a country lawyer like me, is rather nebulous; and it is usually not known what the courts may ultimately decide in respect to specific questions?

Mr. McLAREN. That is correct, sir, and we lost the two, the first two cases in the district court. We were having to take them to the Supreme Court to overcome rather tough findings of fact that had been made against us by the district judges. We had the *Hartford* case still to try. It was a long road. I felt confident that if we were able to get the three cases up together, there was no question, in my mind, what the result would be. However, the *Canteen* and *Grinnell* cases had gotten ahead of *Hartford* and they were due to go up first. I felt confident that we would win them. I recommended the appeal. I know that there are good antitrust lawyers who will tell you that we did not have a prayer of winning them, and there are others who would say, Well, it was a tossup.

My settlement, the way I ultimately analyzed it, is we got absolutely everything we could possibly get by winning *Canteen*. We got the gist of everything we could win or we would want to win in *Grinnell*, and so far as *Hartford* was concerned, we pared off other companies which, under the control of ITT, might be used with *Hartford* for anti-competitive ends. And we thought that we had achieved really as much as we could by going through the appeals. Furthermore, we had a solid order against reciprocity, which we believed ITT had been engaging in, and we had a very solid order against further acquisitions of the major sort. ITT had been the leader in this movement of these really giant mergers that had anticompetitive aspects, which is what we were trying to stop.

Senator ERVIN. And while you had expressed the opinion that you were entitled to win on an appeal, you had the opinion that you were going to win in the district court, did you not? Originally?

Mr. McLAREN. Well, the district judges in these two cases did not agree with me.

Senator ERVIN. And as a practical, legal matter, this is something of a burden resting upon an appellant when he has to take his case that he has lost in a lower court to a higher court; is that not true?

Mr. McLAREN. Yes, sir.

Senator ERVIN. Thank you very much.

Mr. McLAREN. Definitely so.

The CHAIRMAN. Senator Hart.

Senator HART. Mr. Kleindienst, was there ever a time that you and Mr. McLaren disagreed over this in any aspect?

Mr. KLEINDIENST. In the ITT matter?

Senator HART. Yes.

Mr. KLEINDIENST. No; at no time.

Senator HART. And I am not limiting that question merely to the of the consent decree, but the question of litigation or consent?

Mr. KLEINDIENST. No, sir. I think one of the first acts that I committed as the Deputy Attorney General in 1969 and then in these cases as the Attorney General was filing the complaints in the *Canteen*, *Grinnell*, and *Hartford* cases. Mr. McLaren did, as he does in those cases, prepare a prosecuting memorandum, and he presents it to you and he discusses it with you. After the discussion, I signed the complaints that day in my offices, and all three cases, and they were presented.

The CHAIRMAN. You had to authorize the appeals also, did you not?

Mr. KLEINDIENST. Yes, sir. I believe the statute requires the affirmative participation of the Attorney General in many aspects of antitrust law.

Senator HART. What discussions did you have with John Mitchell with respect to any aspect of the ITT case?

Mr. KLEINDIENST. None.

Senator HART. Mr. McLaren, Judge McLaren?

Mr. McLAREN. I had none, sir.

Senator HART. I guess I should ask Mr. Rohatyn that same question.

Mr. ROHATYN. None, sir.

Senator HART. Because you thought you were negotiating a settlement; did you not?

Mr. ROHATYN. I did not think that I was negotiating a settlement, sir.

Senator HART. What did you think you were doing, giving an economics course?

Mr. ROHATYN. I was trying to, sir.

Senator HART. You were trying to negotiate a settlement?

Mr. ROHATYN. No, sir.

Senator HART. Trying to give an economics course?

Mr. ROHATYN. I was trying to make an economic case, sir, of hardship.

Senator HART. To persuade a particular settlement to be arrived at, did you not?

Mr. ROHATYN. Persuade Mr. McLaren and the Antitrust Division that this position on the Hartford or the divestiture of Hartford by ITT would be a very harmful thing to the company.

Senator HART. Now, what discussions did you have with Mr. Mitchell?

Mr. ROHATYN. None, sir.

Senator HART. And these meetings that you participated in, Mr. Rohatyn, would you say that Mr. Kleindienst was not participating in the negotiations of the settlement?

Mr. ROHATYN. Yes, sir; I would say that very definitely. I would say that Mr. Kleindienst was very polite and listened to me, and kept repeating to me essentially that the discussions and the negotiations and the settlement would have to be handled by Mr. McLaren in the Antitrust Division.

Senator HART. And to put it bluntly, the presence of the boss in those meetings was without significance?

Mr. ROHATYN. Sir, as I said, I considered that the final settlement was a very punitive one and a very harsh one.

Senator HART. I am saying on this business of Mr. Kleindienst participating in the negotiations himself?

Mr. ROHATYN. No, sir.

Senator HART. Was he present during some of these discussions?

Mr. ROHATYN. Yes, sir.

Senator HART. Whether vocal or not, is not the presence of the boss, which is the case in the relationship between Mr. Kleindienst and Judge McLaren, a participation?

Mr. ROHATYN. Sir, all I can say is that whatever experience I have had with negotiations, it would lead me to say to you, sir, that Mr. Kleindienst did not participate in negotiations.

Senator HART. I ask this because we have now been told the sequence of events, who was present, the subject matter, the give and take that went on. And all of us know now that one of the issues that brings us together this morning is the statement made by Mr. Kleindienst on December 13 in a letter to the chairman of the Democratic National Committee that the settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General McLaren, and the letter goes on.

(The letter referred to follows:)

DECEMBER 13, 1971.

Hon. LAWRENCE F. O'BRIEN,
Chairman, Democratic National Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has asked me to respond to your letter of December 13, 1971, for the reason that, since he became the Attorney General, he has removed himself from any matter coming before the Department of Justice which could or has involved the International Telephone and Telegraph Corp. (ITT). As you may know, his former law firm has performed legal services for some of the subsidiary corporations of ITT prior to the time that Mr. Mitchell assumed his responsibilities as the Attorney General. Therefore, I have discharged the responsibility of the Attorney General from time to time as and when necessitated by any matter which would involve action or decision by the Attorney General. I have of course done so as the Deputy Attorney General and as required by law.

I have no knowledge, direct or indirect, that the Sheraton Corporation of America, a subsidiary of ITT, has pledged \$400,000 or any other sum underwriting the city of San Diego's bid to host the Republican National Convention next August. I do not know whether San Diego was the personal choice of President Nixon. Similarly, I was not consulted about or involved in any way directly or indirectly, in connection with the selection of San Diego by the Republican National Committee.

The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren, who is in Europe at the present time and is not expected to return until the evening of December 20th, 1971. Upon his return I will request that he communicate with you immediately with respect to the matters raised by your letter. While I am positive that Mr. McLaren had absolutely no knowledge of any pledge by the Sheraton Corporation of America to underwrite the city of San Diego's bid to host the Republican National Convention next August, I will let him respond directly to you in that regard. Mr. McLaren kept me generally advised as to the course of negotiations with ITT and with his reasons for endeavoring to work out a settlement with it. Prior to the final conclusion of these settlement negotiations and the effectuation of a settlement agreement between the Department of Justice and ITT, Mr. McLaren made his final recommendation in the matter to me, with which I concurred. Again, I will leave it to Mr. McLaren to more specifically discuss the details of and reasons for that settlement agreement on behalf of the Department of Justice.

With respect to Congressman Bob Wilson, I have no knowledge whether he met privately in New York with ITT officials at any time and with respect to any purpose. I can say, however, that I have never discussed with Congressman

Wilson any matter of any kind for any reason within the past year. Indeed, I have no personal recollection of ever discussing any matter pertaining to the operation of the Department of Justice with Congressman Wilson at any time within the past three-years, except possibly recommendations that he might have had with respect to the appointment of persons to the Federal Judiciary or to other positions within the Department of Justice. Immediately prior to my preparation of this letter to you I called Congressman Wilson and I related to him the foregoing recollection of mine with respect to talking to him, and he completely confirmed it.

I firmly believe the American people are entitled to know at all times how their public servants arrive at the decision-making process. Assistant Attorney General McLaren will be able to provide that information upon his return. The American people, however, may well begin to question the fairness and responsiveness of the political process when they read of alleged statements of fact, alluded to by you in your letter to the Attorney General which were made without any factual basis or substance whatsoever. I am sure that you will assist Assistant Attorney General McLaren in setting the record straight in this matter as soon as he returns.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Mr. HART. And it might well be that a reader of that letter might not understand that there had been the degree of contact, discussion, and presence on the part of Mr. Kleindienst in the settlement that I think technically could be described as having been arrived at with Mr. McLaren. Would you agree with that?

Mr. ROHATYN. Sir, I am fully alive to the implications that you are raising, but I would still maintain, sir, that the only meeting in which Mr. Kleindienst's presence would be felt as a boss was the large meeting on Wednesday, April 29, and I considered Mr. Kleindienst about as close to a passive participant as I have ever seen, and in no other meetings that I have had with Mr. Kleindienst were there more than the two of us present, and the meetings were exactly as I have described them.

Senator HART. The tragedy of this is that 90 percent of the people that read the papers and listen to this story, no matter what we do, are just going to not believe it. That is the hell of it.

Just to give the setting, we are just one more chapter in this loaded story of why people lack faith in the system.

Judge McLaren and Mr. Kleindienst, you said in your testimony that you put, Judge McLaren, or as Mr. Kleindienst reminded us, some guidelines. At the risk of boring everybody, and perhaps rather than repeating the reasoning that persuaded you in the ITT settlement, to take a consent decree rather than go to litigation, how do you apply these guidelines, and specifically how come a merger between the National Steel and Granite City Steel went unchallenged, although as I understand it that does not even meet the guidelines? How do these work?

Mr. McLAREN. Senator, I suppose I should try to answer that. With respect to the three ITT acquisitions, I think that they can fairly be said to have violated the guidelines because not only did they involve systematic reciprocity and the powers to develop further reciprocity arrangements through the interrelationships of the different companies, but also we felt that ITT was contributing to and proliferating the merger movement that was leading to what I felt, at least, and I know many economists feel, was a very serious con-

centration. I think that a strong economic case can be made against those mergers.

Now, you raised the question of National Steel and Granite City Steel. I think that you can develop, unquestionably, parts of the country and certain lines of products where they have violated the horizontal—that merger violated the horizontal guidelines.

On the other hand, there are strong arguments to be made, that have been made by economists who think that we have overcapacity, that we are not as efficient as we should be in the steel industry, and that these two companies particularly have serious problems.

National, as I recall it, was out of balance in relation to certain productive facilities that it had up on Lake Michigan and badly needing finishing facilities, and Granite City Steel having a lot of finishing facilities and not enough productive facilities, and that they needed for efficiency's sake, and for the sake of Granite City, which you cannot call a failing company, but you can call a floundering company, that that was a sound merger, which would not tend to lessen competition.

And you can find a number of economists who will make that argument very strongly.

On the other hand——

Senator HART. Now, you said——

Mr. McLAREN. Yes, sir?

Senator HART. And correct me if I am wrong here, that in no case were you subject to political pressure or urged to make a decision contrary to your best interests or what you thought it to be?

Mr. McLAREN. That is right, sir.

Senator HART. As an obligation to the antitrust concept?

Mr. McLAREN. That is right.

Senator HART. And you made that explicit with respect to the three ITT cases?

Mr. McLAREN. Yes, sir.

Senator HART. What about National Steel and Granite City?

Mr. McLAREN. Well, I think I have just explained that. The argument——

Senator HART. Yes, you have explained the arguments on both sides, but which position did you take?

Mr. McLAREN. I took the position that we ought to go ahead and file the case, but there were——

Senator HART. You felt the guidelines in that fact situation required the filing of the case. Now, tell us why you did not file the case. Why did you not file the case and let the merger go through unchallenged?

Mr. McLAREN. I recommended it to the Attorney General, and we had numerous meetings on it. There was input by other Government agencies, including the Council of Economic Advisers, and the strong feeling was that the merger would be more pro-competitive than it would be anticompetitive and, therefore, it did not violate the law and, therefore, we should not file a case against it.

But, I do not regard that——

Senator HART. Who made that decision?

Mr. McLAREN. The Attorney General. But, I do not regard that as a political proposition in any way, shape or form.

Senator HART. The way I hinged the question would require you to make that comment. I did not intend it that way. What I was trying to do was trying to find out why in that case, where the guidelines were not met, nonetheless you permitted the merger to go unchallenged. That was the purpose.

Mr. McLAREN. Senator, if I were the Attorney General, my Assistant Attorney General in charge of the Antitrust Division would have to convince me, because I would have the final authority to approve cases; he would have to convince me that a major case like that that was going to violate the law.

And I was not able to persuade the Attorney General that that was so, and I think that were the Attorney General to take any different view of his job, he would not be doing his job.

Senator HART. Well, now, in the case of ITT, you persuaded the Deputy Attorney General, the Acting Attorney General, that the case had validity, that suits should be filed.

Now, if I understand the testimony, the adverse economic consequences which later were made clear to you convinced you that the responsible course was to obtain a consent decree with the terms and conditions that you have outlined, is that right?

Mr. McLAREN. Well, let us distinguish between financial and economic. I think we all know the economic side of it. The real reason for the decision was the devastating financial consequences to the more than a quarter of a million shareholders, and to the ripple effect that might take place in the stock market and in the economy, and I made my decision based on those financial factors, and then I tried with Mr. Hummel and with others in the Department to fashion the best decree that we could, lopping off companies, if you can follow that, and had ITT not owned those companies we would not have challenged the Hartford acquisition, if you follow my reasoning there.

Senator HART. And the outside expert to whom you turned was the gentleman whose memorandum has been filed with us, is that right?

Mr. McLARE. Mr. Ramsden, yes, sir.

Senator HART. Not in criticism of Mr. Ramsden, but where are the expert witnesses in-house, the Justice Department economic staff? What about their economic skills and the Trade Commission? Do you turn to them, on significant matters like this? Again I am trying to better understand how these consent decrees result.

Mr. McLAREN. Again, I have to distinguish between economic and financial. We do have an economic section, and I have had set up in that Division a special economic assistant. Now, they do get into the matters in the area of economic relationships, as to its effect on competition, and so on.

We do not have in the Antitrust Division an expert financial man, and we used this fellow that wrote the report that you have.

We have used another man who is a professor up at Rutgers, too, to analyze financial aspects, as, for example, in the LTV thing.

What we did here in ITT is really very much what we did in LTV, owing to the financial repercussions of this thing, rather than the straight economics. After we realized there would be financial repercussions, then we tried to fashion a decree to take care of the impact on competition, which is an economic concept.

Senator HART. Well, for the record, would you describe briefly the background of the gentleman whose report was an important factor in your decision here?

Mr. McLAREN. Well, he is an investment financial analyst with the New York firm—I will have to get that material for you. I became acquainted with him in the course of the LTV matter, and he did a good job for us there, and I asked him to do this job, again, along with Mr. MacLaury of the Treasury, who was the other fellow that I relied on.

During the course of this I believe Mr. MacLaury became head of the Cleveland Federal Reserve Bank, and he telephoned me that he had analyzed this thing, had not been able to make as close a study as he would have liked, but that in general he found nothing wrong with the ITT presentation, that he felt that there would be very massive adverse effects on the company and its stockholders.

Senator HART. Do you know whether or not there was any effort made to determine whether this outside consultant had been or was counseling ITT or any of its subsidiaries?

Mr. McLAREN. Yes. I am sure that I do not remember specifically doing that, but that would be part of our procedure, Senator.

Senator HART. You have indicated, as my notes show, that on about June 17 you had concluded that the Hartford Fire should not be included in the elements divested. Am I correct on that, and the date?

Mr. McLAREN. Yes, sir, that is the date of my memorandum to Mr. Kleindienst, and after receiving the financial report in the middle of May, I had worked with Mr. Hummel and others to develop this plan. That is correct.

Senator HART. And the final consent settlement was reached on Saturday, the 30th, was it?

Mr. McLAREN. Thirty-first, I think, Senator.

Senator HART. Thirty-first, with Hartford not to be divested. What were the remaining hangups?

Mr. McLAREN. Well, one of them I recall was that they were being anxious to retain the nonfire protection part of Grinnell. This is mainly a kind of plumbing supply, pipe operation, and this had been argued and discussed for some period of time.

I was in favor of whole divestiture of Grinnell. The staff was not all that sure, and they finally came out with the recommendation to me that we accept the partial divestiture, just the fire protection division, because this would be procompetitive in that the combined Grinnell had an advantage over other fire protection operations, and it would be a good result from our point of view.

I have forgotten, really, what the other things were. They had to do, for one thing, that Mr. Sailer was pushing very hard to keep the overseas operations of Avis, and I felt that this would permanently keep Avis in the United States, because ITT would have the overseas trademark, and so I revised that one, and he finally caved in on it.

They were peripheral things, I would say, but still matters of some importance on the fundamental basis of our June 17 proposal.

Senator HART. We are all of us conscious of the memorandum that we have read in the press written by an ITT Washington representative describing conversations with Attorney General Mitchell, and with that in mind I ask both Mr. Kleindienst and Judge McLaren whether Mr. Mitchell ever talked to either of you about this case?

Mr. KLEINDIENST. My answer is categorically "No", Senator.

Senator HART. Judge McLaren?

Mr. McLAREN. Absolutely not. The Attorney General did not talk to me about the case. I did not talk to him about the case. I never heard of Mrs. Beard, if that is her name, until this thing broke, and knowing what I know about this whole settlement thing, her memorandum is absolutely incredible.

Mr. KLEINDIENST. I will join in that statement in total.

Senator HART. And, Mr. McLaren, your testimony is that in the filing, the initiating of the original action against ITT in this series of cases, you simply presented your recommendation, with the lawyer's summary argument as to why, and then Mr. Kleindienst agreed that same day to file action; is that right, and did in fact sign?

Mr. KLEINDIENST. Yes, sir.

Mr. McLAREN. I would not know whether it was the same day or not, Senator. I would kind of doubt it, frankly. It was my custom to send cases up maybe 10 days ahead, or a week ahead, or sometimes 3 or 4 days ahead, when we want them filed, and it would take a little while to get approval. These gentlemen had other things to do, and so on, but basically I sent the memorandum up, and in due course it was approved and I filed the case.

Senator HART. I think some of us are aware that a suggestion has been made that even to initiate these lawsuits you had to threaten to resign.

Mr. McLAREN. That is not so. I never threatened to resign, Senator. I told you earlier I had a three-part understanding with the Attorney General and with Mr. Kleindienst. If they had not kept their part of that bargain I would have resigned. I would not have threatened to.

Senator HART. Well, I will pass. I know that there are other questions and perhaps others will cover them. Knowing the complexity that attaches to a significant antitrust action, I have wondered what goes on, how it is decided whether to sue or not, and when the decision has been made to sue, what it is that persuades a consent decree to be obtained. I think that no matter how complex and how difficult, and how argumentative and how many economists you can get on 15 sides, and how many lawyers you can get on 15 sides of it, the time may be now to attempt on the part of an oversight subcommittee to get into detail and to study all of the factors that are at work, which is for another day.

But, may I pass at this time, Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Mr. Chairman, thank you. I think both Mr. Kleindienst and Mr. McLaren, and Mr. Rohatyn realize full well that none of these questions are terribly easy for those who are posing them, and certainly for those who are responding to them.

And I think in light of what Mr. Kleindienst requested, that we try and develop the fullest possible information and facts on these cases, I think and I hope all of us feel we are asking him in that light, and that you would understand certainly our responsibility in asking in that respect.

Some of the areas that I would like to inquire into have been touched on, both by Senator Hart and by your own comments, but in any event I think it is useful and helpful to the general understanding to perhaps have these responses, along the lines of questions that

would be asked, and I think they would be asked at different times and in different respects, but I would appreciate getting responses to these questions.

I would like to ask Mr. Kleindienst if he would care to discuss his role in the original decision to file against the various ITT mergers?

Mr. KLEINDIENST. Senator Kennedy, those decisions were made in 1969, which was one of the most difficult years I have ever spent in my life.

Coming into a department the size of the Department of Justice, and as a new Deputy Attorney General, with 17 divisions and 40,000 or 45,000 employees, I just do not have that much of a recollection about that. My recollection is that Mr. McLaren, who is one of the leading antitrust lawyers in the United States, or the world, brought those complaints to me, because of this situation by which Mr. Mitchell was disqualified.

And all I remember is that they were either sent up or he talked to me about them and I signed the complaint. I am much like Senator Ervin, I do not know much about antitrust law. I have learned a lot about it recently, but I do not even think I asked them, Senator Kennedy. I think I just signed those complaints.

Senator KENNEDY. And during this period of time, was there any contact between ITT and you, either directly or indirectly?

Mr. KLEINDIENST. No, sir. No, sir.

Senator KENNEDY. In the filing of any of these suits?

Mr. KLEINDIENST. No, sir. No, sir.

Senator KENNEDY. Specifically with regard to the Canteen Corp. acquisition?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. There was no contact at all made with you?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Or from the White House?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. And could you tell us what action you took, and what Mr. McLaren's reaction to your action was?

Mr. KLEINDIENST. On what?

Senator KENNEDY. On the Canteen Corp. acquisition.

Mr. KLEINDIENST. Well, what happened in that case, as in cases where the Assistant Attorney General submits to the Attorney General, he sets up a prosecuting memorandum and proposed formal complaint, and there is a line on the last page of the complaint for the signature of the Attorney General, and the Assistant Attorney General, and the attorneys who handle the case. I put my signature on that line, thereby discharging the statutory obligation of the Attorney General.

It is then sent back down to the Antitrust Division, and unless something like this comes up I never hear of the case again.

It is tried down there, and it is processed down there, but the law requires the signature of the Attorney General in these complaints.

Senator KENNEDY. Was there something special about the three ITT cases? Is it not true these were meant to be sort of the model cases in the administration's attack on the conglomerates?

Mr. KLEINDIENST. Mr. McLaren was a very outspoken advocate of the use of conventional antitrust remedies to stop this headlong rush toward conglomerate acquisitions, and since ITT is, I believe,

the largest conglomerate, or was, I do not know if it still is, that these cases were representative of that policy of the Department of Justice as enumerated by Mr. McLaren and the Attorney General.

Senator KENNEDY. Did not the Antitrust Division believe that they had strong cases in terms of ITT?

Mr. KLEINDIENST. I presume they did. Mr. McLaren is a very forceful advocate. He never manifests anything but deep conviction about these cases to me.

Senator KENNEDY. Well, is it not true, Mr. McLaren, certainly in the Wall Street Journal interview with Mr. Colmeyer you said that these were extremely strong cases and indicated that you felt that there was going to be a favorable ruling in the Supreme Court?

Do you remember that? Or, tell us what, how you felt about the case.

Mr. McLAREN. Well, if I might go back to your earlier question to start, I do not think that there is anything peculiar about these cases against ITT insofar as testing out our program was concerned. My recollection is that I testified in March, early in March of 1969, before the House Ways and Means Committee and laid out what our policy was, and said that we were going to attack these cases where we felt, within the parameters of the five or six Supreme Court opinions, that there was going to be adverse effects—that we would be going at the conglomerate mergers.

Now, this had not been done by the prior administration. It was Mr. Turner's feeling that the statute needed to be amended, you may recall. I have the greatest respect for him, but I just disagree on the law, and I made that clear in 1969.

Well, basically it was a difference between saying that section 7 does not apply to conglomerate mergers, and you would have to have an amendment of section 7 so that the whole thing is up to Congress. That was pretty much the attitude of Mr. Turner. It is not quite fair to him, perhaps, to simplify it that much.

My attitude was that the Supreme Court had said over and over again that section 7 applies to all kinds of mergers, and that the Congress had laid out very clearly that they intended it to apply to conglomerate mergers, and particularly the mergers that were contributing to and really proliferating a merger trend.

And I argued this with these fellows, Mr. Aibel, and I have known him for many years; he is an antitrust lawyer that I had cases with 20 years ago. And if they had gone their course, these cases would have been, in effect, tests of our policy. But, I did not feel, when it came to settling, that I had the right, when I do get the kind of relief that I thought that the United States was entitled to, to force the courts to consider those three cases all the way through—the two that had been tried, *Canteen* and *Grinnell*, which would have been reversed by the Supreme Court and very possibly retried—that we would have had to finally try *Hartford*, which would have been a long, tough job, and then perhaps take it to the Supreme Court.

And we felt that we could get a really meaningful overall settlement, and I think that you can understand that the antitrust bar knows ITT, knows its resources, knows the number of law firms and the sophistication of those law firms, and when those men saw what they were up against, and when they were willing to take a \$1 billion divestiture, and promise not to acquire any more of these major companies, and so on, that was a major deterrent in this whole field, and I felt that it was

as good as the Supreme Court decision, and I might add, without the risk that it would go the other way.

Senator KENNEDY. Certainly having the Department and the Division give as much attention to issue these warnings which they did, carrying this case as persistently as they did, were not the economic effects of the case, if they succeeded, apparent to the Antitrust Division of the Justice Department?

Mr. McLAREN. I am not sure I follow your question, Senator.

Senator KENNEDY. Having given much consideration and much understanding and much contemplation to this range of ITT cases, understanding the significance of them in terms as you mentioned here, a \$1 billion corporation, the largest at that time, and perhaps even now, didn't they understand full well the economic implications of success if they went ahead with the prosecution?

Mr. McLAREN. Didn't ITT or the Department?

Senator KENNEDY. No, the Antitrust Division.

Mr. McLAREN. I think I understand. You are saying the economics, and I take it you mean financial?

Senator KENNEDY. That is right.

Mr. McLAREN. Well, in the hearing in the *Hartford* case up in Connecticut we brought out the fact that they were paying \$500 million for a premium, and as my memorandum to Mr. Kleindienst indicates, I am very critical of the trial judge for taking that into account. I think that he should not have taken that into account because he was being sympathetic with the Hartford shareholders who would lose the \$500 million premium on their stock.

We lost that case, and I might add, Senator Hart, I hope that you will hold hearings and consider again getting us the right to appeal from the denial of these injunctions. Of course, as a judge I should not be saying "us" any more.

But, my point is that I do not think this ever would have come up if we had been able to appeal from the denial of our preliminary injunction up there. We could have taken it to the court of appeals or then to the Supreme Court and had a stay order, in effect, and I think that we would have won the case at that stage, without all of the long, expensive proceedings, without all of the uncertainty that followed on them. Many of these merger cases would be settled that way if we once had the right to appeal from a denial of the preliminary injunction, and these trial judges do not seem very willing to give them to us.

Senator KENNEDY. Judge, you can perhaps understand at least the concern of many who would feel that the Antitrust Division, having given these cases as much consideration as they did, and realizing the whole broad range of legal precedents and the importance to economics and the financial situation of a success in pursuing these cases, that the Antitrust Division would certainly consider the economic and the financial implications of their success in the prosecution of these cases quite clearly and quite deliberately prior to moving ahead in prosecution of these cases, would they not?

Mr. McLAREN. Well, at the time that we filed the *Hartford* case, and at the time we brought out the fact that they were paying a \$500 million premium, we could foresee that if we were successful, this was going to have a massive financial effect. And yet, I did not feel that we had any right to back away from pursuing the case and, in fact, there is a Supreme Court decision right on the point in *General Motors-*

Dupont, where the Supreme Court says that if the parties put themselves in this kind of a position that it is not a legal reason to forgive the violation of section 7.

Now, I do not think a prosecutor can quite take that attitude. I felt that we in the Antitrust Division had to have in mind the effect that it would have on all of these hundreds of thousands of shareholders, and the ripple effect it might have on the economy.

Senator KENNEDY. Mr. Kleindienst, were you acquainted with anyone from ITT before Mr. Rohatyn called in April?

Mr. KLEINDIENST. Was I acquainted with anybody?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. There is only one person in ITT who I have ever been acquainted with, and that is a Mr. Ryan who is employed by that company in Washington, D.C., and he lives in my neighborhood in McLean.

Senator KENNEDY. Could you describe that relationship? Is it purely social, or is it a relationship—

Mr. KLEINDIENST. It is a very casual social relationship. Once or twice a year the neighborhood has a Christmas party or neighborhood party, and then I see Mr. Ryan.

Senator KENNEDY. But there has never been a professional relationship between you?

Mr. KLEINDIENST. None at all, sir.

Senator KENNEDY. Had you ever heard of Mr. Rohatyn before his call?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He was not introduced to you by anyone?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Did he refer to anyone in calling you?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He just called you out of the blue, and you took his call?

Mr. KLEINDIENST. Well, he identified himself as a representative of the company. I think he knew who I was, my responsibilities in the Department.

Senator KENNEDY. And you took his call, without knowing what he was calling about, just because he was a director of ITT?

Mr. KLEINDIENST. Yes, sir, I did.

Senator KENNEDY. Even though you did not know him or had been unaware of him?

Mr. KLEINDIENST. Yes, sir, based upon the identification given, I did.

Senator KENNEDY. Now, in your conversation with Mr. Rohatyn, did you ask him whether he had already presented his arguments to Mr. McLaren?

Mr. KLEINDIENST. No. He prefaced his remarks by saying he was not a lawyer and he did not want to come in and discuss this thing from a legal standpoint, but based upon I call it economics, but I guess financial and economic considerations.

Senator KENNEDY. Well, you are certainly a lawyer.

Mr. KLEINDIENST. I used to be, Senator Kennedy.

Senator KENNEDY. And he, in this conversation, did it not seem appropriate—

Mr. KLEINDIENST. I do not know which. I believe when he came to my office he said that he was not there as a lawyer, that for the purposes of the——

Senator KENNEDY. He was there to talk about a case, though?

Mr. KLEINDIENST. Yes, sir; he was.

Senator KENNEDY. And it was a case being considered by the Antitrust Division?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. And was Mr. McLaren asked to attend that meeting?

Mr. KLEINDIENST. No, sir; because we completed that first meeting—I do not think the first meeting—oh, it might have lasted 25 or 30 minutes, and one of the things he said, Senator Kennedy, was that I will just make the assumption that legally the position of the Government is correct, and that we would prevail. He had not conceded that on behalf of his company, but he wanted to address my attention to the nonlegal questions of the financial and economic impact of the department continuing in this ITT matter.

Senator KENNEDY. Had settlement negotiations already been under-way when Mr. Rohatyn called?

Mr. KLEINDIENST. Well, I think Judge McLaren indicated that throughout this whole period attorneys on behalf of ITT had continually tried to work out, you know, and discuss settlement in the case. I was not aware of those particular negotiations specifically.

Senator KENNEDY. Should you have been aware of it?

Mr. KLEINDIENST. No, sir. No, sir.

Senator KENNEDY. And he made these economic representations to you, is that right?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. And then he talked about the implications of economic hardship and the economic impact. Did you ever talk to Mr. McLaren to ask him whether these issues had been considered by the Antitrust Division, or whether they had been raised and whether they had been considered?

Mr. KLEINDIENST. Well, I contacted Mr. McLaren after my meeting with Mr. Rohatyn and told him what he said, and whether he thought that there ought to be a conference with the people involved to consider it.

But, he said, based upon these representations he thought that they should. Mr. McLaren was not—did not—he was not averse to the thing. It was not something I had to persuade him to do.

Senator KENNEDY. How did that go? Did you ask him for the meeting, if he would have a meeting with Mr. Rohatyn? Did Mr. McLaren say, "Well, these are items that, you know, we have not perhaps given as much thought to as we should, and it would be worth while getting this kind of input," or what?

Mr. KLEINDIENST. I do not recall that, Senator.

Senator KENNEDY. What do you remember about that conversation?

Mr. KLEINDIENST. I do not recall exactly. I know what the substance of it was and the result of it was. Mr. McLaren said, based upon what I said to him, and based upon what Mr. Rohatyn said to me, that he would be willing to have such a meeting for that purpose, and one such was held.

Senator KENNEDY. I mean, in your conversation with Mr. McLaren, was he impressed? Did you gather the fact that he was impressed about the balance of payments arguments, or the impact that this divestiture might have on the stockholders, which are all very well understood, as I understand, in antitrust.

Mr. KLEINDIENST. I do not recall any subjective impressions of Mr. McLaren on that at the time, Senator Kennedy. I really do not.

Senator KENNEDY. Could you give us any kind of idea? Did he seem that—well, did he say that well, we will just sort of run through the motions of a meeting, or did he seem to feel that there might be something here that they had not considered, or can you tell us about it, when you were going into that meeting, what you really hoped to achieve or accomplish?

Mr. KLEINDIENST. I think one thing we might have said was that any information that they gave to him along the line he would like to have corroborated or, you know, looked at very carefully.

But, I just do not recall any more than that, Senator Kennedy.

Senator KENNEDY. Having sat through that first meeting, could you tell us what economic arguments had been advanced by Mr. Rohatyn that not been considered by the Antitrust Division?

Mr. KLEINDIENST. Well, I did not know what economic considerations the Antitrust Division had considered, and I described in my testimony, generally speaking, what Mr. Rohatyn said to me on my first visit, and then I sat through the April 29 meeting.

Senator KENNEDY. And from that, did there appear to be economic arguments that were put forward that had not been considered by the Antitrust Division?

Mr. KLEINDIENST. Well, I was quite impressed by the assertions made by Mr. Rohatyn in my office, you know, that if they were true, then these consequences would follow from a divestiture of Hartford, and I was quite impressed by it, by those arguments.

Senator KENNEDY. Mr. McLaren, could you tell us what sort of arguments or representations were made by Mr. Rohatyn that had not been considered by the Department?

Mr. McLAREN. That had not been made before?

Senator KENNEDY. Yes, that you remember.

Mr. McLAREN. Well, I think I indicated earlier really there had been two basic approaches previously.

One was that we did not have much chance of winning the case and, therefore, we should take a kind of slap on the wrist injunction against further acquisitions and against reciprocity.

Senator KENNEDY. Who said this? Who made this representation?

Mr. McLAREN. I am not entirely sure who it was among the ITT lawyers that made that particular pitch. I think it was Mr. Chaffetz of—

Senator KENNEDY. You had heard the argument before?

The CHAIRMAN (continuing). Let him answer the question.

Mr. McLAREN. I had heard that argument before, and Mr. Chaffetz is a former chairman of the antitrust section of the American Bar, and a very highly regarded lawyer, and he was in charge of the ITT *Canteen* defense in Chicago.

And he and I argued about it, in essence, the validity of our conglomerate merger policy.

The second approach was along the lines that—I think this was Mr. Jacobs' approach—that well, forget about who is going to win or lose, the most you can get out of the court, and the most you should really ask for or want is thus and so, which included an injunction and some divestiture but keeping Hartford. And I was not very interested in that because I thought that we would take the cases up and we would win them and get more than that.

This was the third approach that was being made by Mr. Rohatyn, and it runs in my mind that—well, it was in the spring of 1971, and the pitch was, assuming you are successful in the *Hartford* case, it will just about break ITT, and is there not something that we can work out that would be short of going clear down the road in all of these cases to a final litigated result. And I said that I would be willing to listen to anything they could present on that subject, and if they could persuade me that that was true, why, we would study the question.

Up to that point I saw no reason for settling them.

Senator KENNEDY. Well, I have not heard the economic arguments yet that the meeting was supposedly called to consider that so impressed—

Mr. McLAREN. Senator, I am still having difficulty. You are saying economic and I do not know if you mean economic or financial.

Senator KENNEDY. The economic, whatever that difference is, as I understand from what Mr. Kleindienst mentioned here, that he thought it was particularly persuasive, in the implications for the balance of payments argument.

Mr. McLAREN. Yes.

Senator KENNEDY. Its implications in terms of the stock market, over-all stock market kind of questions, and other stockholders, and the relationship in terms of international competition.

And I hear now from you that the strong arguments that were made were, one, that you could not win, that the Government cannot win; and secondly, this is a so-and-so divestiture, and those other arguments which were being made by counsel, that as I understand you have been talking about and negotiating with, I thought.

Mr. McLAREN. And we rejected them.

Senator KENNEDY. And rejected them previously.

Mr. McLAREN. Right.

Senator KENNEDY. When did Mr. Rohatyn—because I thought the meeting was set up so that Mr. Rohatyn could present new arguments about the economic implications, so could you tell me when he spoke, and I would have assumed that he would have been the first one to speak—

Mr. McLAREN. Senator, I think I did not get across to you that there is a difference in time frame. The first pitch on the subject of you cannot win, you should not win, and so on, was perhaps in the middle of 1970, and I rejected that approach. Then in the latter part of 1970 they came in with the idea that I have told you about with Mr. Jacobs, and here is everything that you need, really, that takes care of all of the things you get in litigation, and we will keep Hartford. And I rejected that approach in November of 1970.

Then in the spring of 1971 they came in—both of those, incidentally, I would say are economic arguments and have effect on competition

and so on—they came in in the spring of 1971 with this final argument, the financial hardship argument, and that was the entire subject of a meeting on April 29 with Mr. Rohatyn, making a pitch from the viewpoint of an investment banker, Dr. Saulnier making a pitch from the viewpoint of international balance of payments and the weakening of ITT in its ability to finance its overseas operations, and then the other gentlemen also making hardship kinds of arguments.

Those arguments, at that meeting, were entirely new. They had not been presented up until the spring of 1971.

Senator KENNEDY. Thank you. That clarifies it.

Yes, Mr. Kleindienst.

Mr. KLEINDIENST. Senator Kennedy, you might have noticed that I have been talking to Mr. Rohatyn and I have had my recollection refreshed as to why he called me in the first place. I believe that Mr. Ryan, who lives out in my neighborhood, might have said at one of these parties that there would be an economic problem to ITT, and would I be willing to talk to somebody from the company, and I think I said yes, I would.

And then that precipitated Mr. Rohatyn to call. No one discussed with me who that would be, and that was several weeks later.

Senator KENNEDY. Was it Mr. Ryan? Could you give us his full name and where he lives?

Mr. KLEINDIENST. John Ryan, and I do not know what his title or position is in the company. He lives on or near Portland Place in McLean.

Senator KENNEDY. Is he—he works, or what—what is his work at ITT?

Mr. KLEINDIENST. I do not know what his job is.

Senator KENNEDY. But he was associated with ITT?

Mr. KLEINDIENST. I believe he is.

Senator KENNEDY. Mr. Rohatyn, could you tell me?

Mr. ROHATYN. Sir, all I know is that he is an employee of the company.

Senator KENNEDY. You do not know in what respect?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You do not know if he knows Mrs. Beard, or does not?

Mr. ROHATYN. I have no idea.

Senator KENNEDY. But anyway, Mr. Kleindienst, now you do remember having some conversation with Mr. Ryan?

Mr. KLEINDIENST. Yes. I recall now that I have talked to Mr. Rohatyn that Mr. Ryan had, at one of these functions where there would have been 20 or 30 people—

Senator KENNEDY. This is the Christmas party?

Mr. KLEINDIENST. This was in the spring. It must have been a spring party. He raised the question whether I would be available to an officer of the company to discuss the economic aspects of it, and I must have said yes to him because I think that that is how Mr. Rohatyn was encouraged to call me. I never heard of Mr. Rohatyn until he called me, however.

Senator KENNEDY. And when Mr. Rohatyn called, did he mention Mr. Ryan to you?

Mr. KLEINDIENST. No. No; he did not.

Senator KENNEDY. Now, Mr. Rohatyn, you know Mr. Ryan?

Mr. ROHATYN. No, sir.

Senator KENNEDY. Well, then, what is the significance?

Mr. KLEINDIENST. Well, the significance of it is that my testimony first indicated that——

Senator KENNEDY. No—all right.

Mr. KLEINDIENST. Excuse me. I am sorry.

Senator KENNEDY. Why don't you continue, then, and then I will ask.

The CHAIRMAN. Let him answer the question.

Senator KENNEDY. That is what I asked, Mr. Chairman.

Mr. KLEINDIENST. Well, the significance is at the time of my original testimony I did not recollect this situation, and Mr. Rohatyn told me the reason why he called me is that someone in the company told him or the company that I would be willing to see somebody with respect to the financial, economic aspects of this matter.

Senator KENNEDY. Well, now, Mr. Rohatyn, can you tell us who in the company told you?

Mr. ROHATYN. Sir, I believe it was, it was Mr. Geneen or our internal counsel. I believe at one of our meetings I was told——

Senator KENNEDY. Who is that? Who is the counsel, internal counsel?

Mr. ROHATYN. Mr. Aibel.

Senator KENNEDY. It was either Mr. Geneen or Mr. Aibel?

Mr. ROHATYN. I believe it was Mr. Geneen, sir.

Senator KENNEDY. What did he tell you?

Mr. ROHATYN. To the best of my recollection I was told that we would have to prepare an exposition about the economic hardship on ITT with the Hartford Fire disposition, and that I could have a meeting with the Deputy Attorney General if I called him to make an appointment, in order to make that case.

Senator KENNEDY. You mean that Mr. Geneen had mentioned to you that you could have an appointment?

Mr. ROHATYN. I believe that is right, sir. This is to the best of my recollection, sir. This was a long time ago.

Senator KENNEDY. Tell us, Mr. Kleindienst, whether you know that there would be any reason why Mr. Geneen would believe that an appointment could be made?

Mr. KLEINDIENST. Well, Mr. Ryan——

Senator KENNEDY. If you had not had any contact?

Mr. KLEINDIENST. The only belief I would have had would be Mr. Ryan would have told him that.

Senator KENNEDY. Mr. Ryan would have?

Mr. KLEINDIENST. Told Mr. Geneen that, or somebody in the company.

Senator KENNEDY. I see, and you do not know or did not know, Mr. Rohatyn, how Mr. Geneen heard about this; is that correct?

Mr. ROHATYN. No, sir; but I assume that it was someone within the company telling him about that, or from our General Counsel's Office. I would not know.

Senator KENNEDY. But in any event, the information you received was that Mr. Kleindienst would be willing to meet with you if you called and indicated that you were a director of ITT?

Mr. ROHATYN. Yes, sir; and that I was speaking as a financial expert.

Senator KENNEDY. So, you did not feel you were really calling right out of the blue?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You felt that if you did call you would be able to get some time?

Mr. ROHATYN. Yes, sir.

Senator KENNEDY. Is Mr. Aibel involved in the negotiations at all?

Mr. ROHATYN. Mr. Aibel was involved in the negotiations with the Department, with the Antitrust Division as general counsel for the company; yes, sir.

Senator KENNEDY. I see. And just so we get the ballplayers straight, is that, Mr. McLaren, then, that Mr. Aibel was one of the continuing contacts that you had as attorney handling the case for ITT?

Mr. McLAREN. Yes, he is the gentleman I spoke of before, that I have known him for years, and that we had discussions and I told him if they went ahead with the acquisition in Grinnell that we were going to sue him, and he went ahead and we sued him.

Senator KENNEDY. Now, Mr. Kleindienst, could I ask you who decided who was going to be there on the 29th of April—was this your decision or Mr. McLaren's?

Mr. KLEINDIENST. No, sir.

Mr. McLAREN. That was my decision, Senator.

Senator KENNEDY. As to the makeup of the meeting?

Mr. McLAREN. I invited Mr. McLaurey of the Treasury and his assistants, and I arranged for his staff people to be there. I think I listed them all in my prepared statement.

Senator KENNEDY. Why, Mr. Kleindienst, did you think it was either necessary or appropriate for you to go to the meeting?

Mr. KLEINDIENST. Well, in these cases I was the Attorney General of the United States, and they were very large cases, they were very significant cases. I was quite impressed by the statement made by Mr. Rohatyn 9 days before, on April 20, and also Mr. McLaren invited me to attend.

And I was rather anxious to go to hear in more detail the presentation.

Senator KENNEDY. Had you attended other meetings of that nature?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Excuse me.

Mr. McLAREN. May I just comment, Senator Kennedy?

Senator KENNEDY. Yes.

Mr. McLAREN. That is not particularly unusual. Occasionally where I have told companies that if they proceed we plan to sue, and so on, they ask to appeal from my determination to the Attorney General, and sometimes he does, and sometimes he does not receive them, and I think you might call this such a type of meeting.

The CHAIRMAN. We will recess now until 2 o'clock.

(Thereupon, at 12:45 p.m., the hearing was recessed, to reconvene at 2 p.m. this same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator Kennedy.

Senator KENNEDY. As I understand it, Mr. Rohatyn, during the luncheon hour—Mr. Ryan evidently is the deputy director of the ITT Washington office under Merriam. He served in that office with Mrs. Beard. Are you aware of that?

**TESTIMONY OF RICHARD G. KLEINDIENST, ACCOMPANIED BY
RICHARD W. McLAREN, FELIX G. ROHATYN, AND WALKER B.
COMEGYS—Resumed**

Mr. ROHATYN. I do not know Mr. Ryan, sir. I know he works for the company.

The CHAIRMAN. A little louder, please.

Mr. ROHATYN. I say, I know he works for the company. I do not know him.

Senator KENNEDY. Do you know Mrs. Beard?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You have never met Mrs. Beard?

Mr. ROHATYN. No, sir.

Senator KENNEDY. And you have never met Mr. Ryan?

Mr. ROHATYN. No, sir.

Senator KENNEDY. I might ask—as I understand, Mr. Chairman, Mr. Merriam is here. Is he going to appear?

The CHAIRMAN. Who?

Senator KENNEDY. Merriam.

The CHAIRMAN. Mr. Merriam, yes.

Senator KENNEDY. He is going to appear?

The CHAIRMAN. Yes.

Senator KENNEDY. And Mrs. Beard—she, as I understand it, is going to be subpoenaed?

The CHAIRMAN. We tried to get her yesterday and we could not reach her, and I issued a subpoena for her last night, or yesterday afternoon.

Senator KENNEDY. Mr. Rohatyn, does I.T. & T. know where she is?

You do not know where Mrs. Beard is, or you do not know her?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You are sure that I.T. & T. would cooperate, are you not, in trying to locate her?

Mr. ROHATYN. Believe me, Senator, of course.

Senator KENNEDY. Could I ask, Mr. Kleindienst, when you first talked with Mr. Ryan, did you mention to him that it would be useful if he saw Mr. McLaren at Antitrust?

Mr. KLEINDIENST. Senator Kennedy, I have never discussed any aspect of this case with Mr. Ryan. My recollection is that at one of these so-called neighborhood parties, he was rather insistent of the bad treatment by the Department of ITT, and that it was going to have very serious economic repercussions. At the conclusion of it, he asked me whether or not I would be available to talk to somebody from the corporation who set that before me. My recollection is that I either said, yes, I would, or made no comment about it, or that I would be willing

to get any evidence, you know, that would be pertinent to you. I did not know that Mr. Ryan transmitted that to the company or caused Mr. Rohatyn to come in to see me.

Senator KENNEDY. So you were unaware when they, you were unaware, you just took Mr. Rohatyn's phone call without any kind of advance notice that either somebody from ITT would call you—I mean, Mr. Ryan did not end the conversation and say, well, I am going to have somebody from I.T. & T. call?

Mr. KLEINDIENST. No, he did not. I think I left the impression with him that I would be willing to talk to somebody from the company. When Mr. Rohatyn called, I had never heard of him before.

Senator KENNEDY. How much after your conversation with Mr. Ryan did Mr. Rohatyn call?

Mr. KLEINDIENST. That is what I cannot recall, Senator. It could be a matter of weeks, 2 or 3 weeks, days.

Senator KENNEDY. When was the call, anyway, Mr. Rohatyn?

Do you remember, Mr. Kleindienst, when Mr. Rohatyn called?

Mr. KLEINDIENST. It was before April 20.

Senator KENNEDY. Do you remember when?

Mr. KLEINDIENST. No, I don't.

Senator KENNEDY. Do you remember, Mr. Rohatyn?

Mr. ROHATYN. No, sir. It was within a week before the 20th of April, I would think.

Senator KENNEDY. Somewhere within the week before the 20th?

Mr. ROHATYN. I would think so; yes, sir.

Senator KENNEDY. But not much prior to a week before?

Mr. ROHATYN. I do not think so; no, sir.

Senator KENNEDY. Now, if we could get back to the meeting, the April 29 meeting, and the makeup of that meeting; as I understand, those who were invited were invited by you, Mr. McLaren. Is that correct?

Judge McLAREN. Primarily, yes.

Senator KENNEDY. Were you surprised, Mr. Kleindienst, that the Antitrust Division did not have its own economic experts there?

Mr. KLEINDIENST. Well, I am aware of the fact that they do have economists on the staff because I had to be aware of that in terms of the preparation for our budget. I think the distinction, and I did not know that there was that kind of distinction down there, but as Judge McLaren said, those are economists and not so-called "financial people." I did not know that they did not have the so-called financial person there. I knew they had economists.

Senator KENNEDY. Well, why do they not have the others? Why do they not have financial people? Is that not the implication of this?

Mr. KLEINDIENST. I have no reason to give on that. But it would seem, based upon the facts and circumstances of this case, that that might be something to consider for the Department.

Senator KENNEDY. Could you tell us, Mr. McLaren?

Judge McLAREN. I think the reason, Senator, is that by and large, the financial aspects of, say, a merger are not particularly important to us. The economic aspects are the important ones, and we do have economists. I think we have only had a need for the financial type of expert twice in the 3 years that I was there—once in the LTV case and once in this case.

Senator KENNEDY. Do you see a very significant distinction between the financial and economic?

Judge McLAREN. Oh, yes; there is a very marked distinction. A financial expert is kind of a money, banking, and markets man, whereas the economic expert is—well, you have macroeconomics, and microeconomics, and we are primarily interested in microeconomics and what happens to competition in given situations.

Senator KENNEDY. Well, when you were considering these cases, did you not feel that those matters were being sufficiently covered by your own economists, the money and banking matters?

Judge McLAREN. Well, as I said, I do not think the money and banking side of it is very important in the vast majority of our cases. I did think that in the two cases where we needed it, bringing in the Treasury and the outside financial expert did the job for us. I would find it difficult, Senator, to go before Mr. Rooney and justify setting up a financial section in addition to our economic section.

Senator KENNEDY. Do you think you would after this case here?

Judge McLAREN. Yes; because I think that the Treasury plus outside expertise is adequate on a case-by-case basis.

Senator KENNEDY. As I understand, Ramsden, then, did the financial study, is that right, for the Department?

Judge McLAREN. Well, he did one study and the Treasury did their study of materials that ITT had turned in. Of course, I do not think we in the Department are completely stupid in this field.

Senator KENNEDY. No.

Judge McLAREN. We did some analyzing ourselves.

Senator KENNEDY. As I understand, you mentioned that you had met Ramsden during the LTV case; is that correct?

Judge McLAREN. Yes, sir.

Senator KENNEDY. How did you learn about him in that case?

Judge McLAREN. How did I what?

Senator KENNEDY. How did you learn about him for that case, or in that case?

Judge McLAREN. Either the Treasury or the White House recommended him. I do not recall.

Senator KENNEDY. The Treasury or the White House?

Judge McLAREN. Yes.

Senator KENNEDY. Would there be any record of that?

Judge McLAREN. I doubt it.

Senator KENNEDY. Why would the White House have recommended a financial expert in a case?

Judge McLAREN. Because I asked them.

Senator KENNEDY. To recommend a financial expert?

Judge McLAREN. Yes.

Senator KENNEDY. The White House, to recommend a financial expert to consider the materials in this case, in the LTV case?

Judge McLAREN. In the LTV case; yes.

Senator KENNEDY. Who, in the White House?

Judge McLAREN. Probably Peter Flanigan. I had a number of matters with Mr. Flanigan of one sort or another, primarily legislation. But I knew of him as somebody knowledgeable in financial matters, and I respected his opinion.

But I may have gotten the suggestion of Mr. Ramsden from Mr. MacLaury, who is the Treasury fellow. He was also in on LTV.

Senator KENNEDY. Was Mr. Flanigan in on LTV?

Judge McLAREN. No; not other than if he was the one I talked to to recommend an expert. And I think I may have discussed what I intended to do there with Mr. Kleindienst from the financial standpoint.

Senator KENNEDY. Why would you discuss that with him? Is there any—I am just inquiring. I am just interested.

Judge McLAREN. Do you understand the LTV decree? It is a very broad decree. It was a very important case at the time. LTV was in very bad trouble when we began analyzing it in those terms. I think I might have consulted with others—Paul McCracken, perhaps. I wanted to be sure I was right on this thing, that is all.

Senator KENNEDY. Sure.

Well now, to get back—are you unsure as to who recommended Mr. Ramsden? It was either Mr. Flanigan or the Treasury——

Judge McLAREN. Either Flanigan or MacLaury, I would say. I have no specific recollection, but that is the best I can remember.

Senator KENNEDY. In any event, he was the one who took this material, as I understand it, provided by ITT and did the survey and the study and made a recommendation to you. Is that right?

Judge McLAREN. Both Ramsden and MacLaury.

Senator KENNEDY. Took the ITT material?

Judge McLAREN. Yes.

Senator KENNEDY. Both of them. And then they made the recommendation?

Judge McLAREN. Right.

Senator KENNEDY. And the evaluation of the ITT material?

Judge McLAREN. Well, they made their own evaluation, I think, as well as reviewing what ITT had furnished.

Senator KENNEDY. At any time did you talk about the ITT case with Mr. Flanigan or anyone in the White House?

Judge McLAREN. I do not believe so.

Senator KENNEDY. So you did not have any communication with anyone in the White House in any way about the ITT case?

Judge McLAREN. Not that I recall at this time, and I think I would recall if I had.

Senator KENNEDY. Sure. But they did the study, these two men.

Have the materials that have been provided by ITT, are they available?

Judge McLAREN. Oh, yes; certainly.

Senator KENNEDY. They are available to the members of the committee if they want them?

Judge McLAREN. Surely; yes.

Senator KENNEDY. Was there any memorandum kept, Mr. Kleindienst, that you know of, of the meeting that was held? Is there any record or recording kept of the meeting about who said what to whom?

Mr. KLEINDIENST. Not that I know of. If there is, Mr. McLaren has it.

Senator KENNEDY. Do you know of any?

Judge McLAREN. I would have to check. We had a lot of people at that meeting and somebody may have taken notes or made a memorandum. I am not sure.

Senator KENNEDY. Mr. Rohatyn, did you keep any notes on that?

Mr. ROHATYN. Sir, I was speaking from the memorandum which we delivered to Mr. McLaren after the meeting.

Senator KENNEDY. But you did not keep any notes of the general meeting?

Mr. ROHATYN. No, sir; I was speaking.

Mr. KLEINDIENST. Senator, I made some pencil notes during that meeting, and I gave them to Mr. McLaren at the end of the meeting. But what he did with them, I do not know.

Judge McLAREN. I assume they went into the file, Senator.

Senator KENNEDY. Well, could those notes be available to us?

Judge McLAREN. Surely.

Mr. KLEINDIENST. I have no objection.

Senator KENNEDY. The file would just be the total file on the case; is that right? Is that the file you are referring to?

Judge McLAREN. It would probably be the ITT Hartford file.

Senator KENNEDY. Mr. Kleindienst, did you ever make any notes based on your conversations or meetings with Mr. Rohatyn?

Mr. KLEINDIENST. No; I did not.

Senator KENNEDY. On any of the conversations?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Or meetings, or anything else?

Mr. KLEINDIENST. I customarily do not, Senator, just because of the number of meetings and the time factor in my office, day in and day out.

Senator KENNEDY. I think, Mr. McLaren, earlier this morning, we asked for the background on Mr. Ramsden. I think you mentioned some of that. I think in terms of response, you indicated that your experience with him was primarily in the LTV case, and you were able to give us a sort of scattered kind of background. Is there anything else you want to add about his background?

Judge McLAREN. I have no further information on him, Senator.

Senator KENNEDY. And did your own Department economists get an opportunity to look at Mr. Ramsden's report after he filed it?

Judge McLAREN. I cannot specifically remember. Mr. Hummel was Deputy Director of Operations in charge of all three of the ITT cases overall. I am sure that he saw it. But who else might have seen it, I do not know. I was the one who analyzed it and reached a conclusion on the basis of it—that and the conversations I had with Mr. MacLaury.

Senator KENNEDY. With Mr. who?

Judge McLAREN. MacLaury.

Senator KENNEDY. MacLaury is the economist from the Treasury Department; is that right?

Judge McLAREN. MacLaury. He was the Deputy Assistant Secretary in charge of monetary affairs, or financial affairs, or something. I think he is identified in my statement.

Senator KENNEDY. Do you remember his background. Mr. McLaren? Where did he come from? Did he have an overseas background, do you remember? Is he a professional—

Judge McLAREN. I believe he is a money and banking expert.

Senator KENNEDY. Has he been in the Department?

Judge McLAREN. No; not in the Department of Justice. He is a banker, I think.

Senator KENNEDY. No, but in the Treasury; has he been there a long time? Is he a professional?

Judge McLAREN. I really do not know.

Senator KENNEDY. But the two men that did the study, the basis of your decision, as I understand it now, the two men that did the study made the recommendations to you. The results of this study, are they available to us on the basis of that?

Judge McLAREN. As far as I know. Mr. MacLaury, I understand, is now president of the Federal Reserve Bank of Minneapolis. Mr. Ramsden, I assume, is still with his firm in New York.

Senator KENNEDY. Which firm, do you know?

Judge McLAREN. I do not recall. I would have to get that.

Senator KENNEDY. But it was primarily based upon their report that you made your final recommendation that you communicated to Mr. Kleindienst and later telephoned in sort of a joint telephone call?

Judge McLAREN. Well, it was on the basis of everything, including my own analysis of the whole situation, as well as theirs. I became persuaded that there would be a really extensive impact were we to go ahead and force divestiture of Hartford.

Senator KENNEDY. Mr. Rohatyn, I understand that Ramsden is a New Yorker. Do you know anything about him? Do you know him?

Mr. ROHATYN. No, I do not.

Senator KENNEDY. How about MacLaury?

Mr. ROHATYN. I met Mr. MacLaury at that meeting, and I had previously seen him once, because he was a governor of the Securities Investment Protector Corp.

Senator KENNEDY. But you never had any conversations with him?

Mr. ROHATYN. No, sir.

Senator KENNEDY. Other than that meeting?

Mr. ROHATYN. No, sir.

Senator KENNEDY. And you had never met Mr. Ramsden?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You do not know him?

Mr. ROHATYN. No, sir.

Senator KENNEDY. Do you know, Mr. Kleindienst, what Mr. Ramsden's recommendations in the LTV case were?

Mr. KLEINDIENST. No, I do not.

Senator KENNEDY. Mr. McLaren, do you?

Judge McLAREN. Mr. Ramsden?

Senator KENNEDY. Yes.

Judge McLAREN. Mr. Ramsden's recommendation was—well, it was an analysis of their situation, and his conclusion was that they were in desperate financial straits, which subsequently turned out to be quite an understatement.

Senator KENNEDY. Who was in charge of that, Mr. Kleindienst, in the Department? Mr. Mitchell or yourself?

Mr. KLEINDIENST. Yes, he would have been the Attorney General on that case.

Senator KENNEDY. Were you present when Mr. Mitchell met with Mr. Perot in 1970, Ross Perot?

Mr. KLEINDIENST. No, I never met Mr. Perot.

Senator KENNEDY. Mr. Kleindienst, at the time you were meeting with Mr. Rohatyn, did Mr. McLaren know about these various meetings which you have itemized today?

Mr. KLEINDIENST. He knew about the April 20 meeting. He would have known about the April 29 meeting.

Senator KENNEDY. Well, he was there at that one.

Mr. KLEINDIENST. Right. I do not believe I told him about the other meetings.

Senator KENNEDY. Well, Mr. McLaren, did you know or did you have any way of knowing?

Judge McLAREN. No, sir, I was unaware of any further meetings that they may have had.

Senator KENNEDY. And there were no memoranda or records of any of those meetings; is that right, Mr. Kleindienst?

Mr. KLEINDIENST. I did not, unless Mr. Rohatyn did. I made no memorandum of them.

Senator KENNEDY. Could you tell us how the final settlement differed from the recommended settlement, Mr. Kleindienst, in this case? Do you remember that?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Mr. McLaren?

Mr. KLEINDIENST. Yes—well, know and I have had my memory refreshed. The final settlement differed from the recommended settlement in that, instead of a complete divestiture of Grinnell, only a divestiture of Grinnell's fire protection business was required. I believe that was the only, as far as I know, the only exception to what was presented to Mr. Rohatyn on June 17 on the telephone. There might be something else, but that is the only thing I know.

Senator KENNEDY. Is there any way of finding out specifically what changed their minds in terms of that difference from the initial—final settlement, from the recommended settlements?

Mr. KLEINDIENST. I believe Judge McLaren testified about it in his prepared remarks. My recollection of that, although they will speak for themselves, is that it was recommended to him by his staff.

Senator KENNEDY. Mr. McLaren, could you tell us at what point or date the trial attorneys of the Antitrust Division ceased making preparations for the trial?

Judge McLAREN. I would guess they probably started concentrating on the settlement negotiations when I put them in charge of them about July 1. I remember there were depositions on June 18 and—

Senator KENNEDY. They went ahead with those, did they not?

Judge McLAREN. They did; yes, sir.

Senator KENNEDY. That was after you notified them. As I remember, you said you notified them on the 17th, did you not?

Judge McLAREN. Yes, that is right.

Senator KENNEDY. Then at some time, I think you indicated in late July, you notified Mr. Kleindienst that you were prepared to make some kind of an indication of the terms for the settlement; is that right?

Is that right, Mr. Kleindienst?

Judge McLAREN. No; wait. Let us go back a minute. When I put the two men in charge of negotiations on July 1, the matter was still being very closely held within the Department on a, what we called "need

to know" basis. I think that the trial staff was not informed other than the two men that I put in charge of the negotiation and that the trial preparation continued going forward.

Now, your next question was, why did I tell Mr. Kleindienst the outline of the settlement?

Senator KENNEDY. Yes.

Judge McLAREN. Well, going back, about the middle of May, we got this analysis from the experts, so-called. I reviewed the whole situation. I talked with members of the staff. Mr. Hummel and I got up a general outline of the proposal, which is in my memorandum of June 17, and on June 17 I presented them to Mr. Kleindienst and he approved it.

Senator KENNEDY. Then what did you do next? After June 17, did you make a phone call?

Judge McLAREN. No. Next I got a call from Mr. Sailer saying that he wanted to come in and discuss the matter.

Senator KENNEDY. Did you not at some time—whom did you notify in I.T. & T? Did you notify just Mr. Kleindienst and then he passed this on?

Judge McLAREN. No. At the conclusion of our June 17 meeting, Mr. Kleindienst and I put a call through on Mr. Kleindienst's phone to Mr. Rohatyn, because at the earlier meeting in April he had been, in effect, the representative, the executive of I.T. & T. who had called for the meeting, who had presented all this financial data, and so on, and I presented my proposal to him, more or less on a "take it or leave it" basis, with details to be negotiated.

Senator KENNEDY. You understood, then, Mr. Rohatyn as being the principal negotiator for I.T. & T.?

Judge McLAREN. Well, as being somebody they had designated to come in and make this hardship plea.

Senator KENNEDY. He was the fellow in charge, the real fellow in charge, of all the negotiations—did you gather that impression?

Judge McLAREN. Well, it was not negotiations. It was a question of whether we were going to agree on a decree that we would let them keep Hartford, and I outlined the basis on which we would be able to do that. I told him that if that was acceptable to the top brass, I wanted their trial lawyer to get in touch with me and we would iron out the final negotiations on the decrees.

Senator KENNEDY. But in any event, you felt he was the man to contact rather than the lawyers?

Judge McLAREN. At that stage, yes.

Senator KENNEDY. When did you gather that impression? When did you gather the impression that he was really the fellow in charge of making the important decisions for I.T. & T.?

Judge McLAREN. I did not think he was going to make the decision. I thought the directors were going to make the decision and he was one of the directors. He had presented their case, we came back and said, here is what we are willing to do. I think it is only natural that you go back to the guys who made the first pitch.

Senator KENNEDY. Did you understand, Mr. Kleindienst, that that was his role, or did you think it was the attorneys that were involved in the day-to-day negotiations that were in charge of the negotiations?

Mr. KLEINDIENST. Well, I understood that Mr. Rohatyn had only one function in this situation. That was to first make a financial-economic presentation to the Department. That was done on April 29. Then, when Mr. McLaren brought up the proposed settlement outline, I presume because of the fact that Mr. Rohatyn was the head of the company at the April 29 meeting is why he wanted to call Mr. Rohatyn on June 17 to tell him what we would be willing to do.

I understand that thereafter, based upon Judge McLaren's testimony, he then negotiated the settlement with the company lawyers.

Senator KENNEDY. He was the one who worked out the settlement with the I.T. & T. directors?

Mr. KLEINDIENST. With the lawyers.

Senator KENNEDY. With the lawyers?

Mr. KLEINDIENST. Yes, sir. I never did anything in that regard.

Senator KENNEDY. Mr. McLaren, did you gather the impression that the attorneys of I.T. & T. understood this relationship, too? I mean, at any time, did any of the attorneys for I.T. & T. say, Mr. Rohatyn is the fellow sort of to work through?

Judge McLAREN. I had never heard of Mr. Rohatyn before this April meeting. Then, when we came up with our proposition in June, I told Mr. Rohatyn that if that was acceptable, we would, from there on, deal with the lawyers. When Mr. Sailer came back the next day and said, OK let's sit down and negotiate, I took that—particularly because of the information he had; it was obvious he had gotten it from Rohatyn.

From there on, I dealt with their lawyers.

Senator KENNEDY. Well, you can see part of the problem. ITT, in its press release, said agreement was reached with the Justice Department only after hard negotiations between "our outside legal counsel" and then Assistant Attorney General, Richard McLaren, and his staff.

"Neither Mrs. Beard nor any other legal counsel were authorized to carry out such negotiations."

Judge McLAREN. That is true.

Senator KENNEDY. I thought you just said you felt that Mr. Rohatyn was the negotiator.

Judge McLAREN. I said I only had two contacts with him, and we put it up, an outline of settlement to the company, take it or leave it; if you are going to take it, come back and we'll negotiate it out with your lawyers.

They sent their lawyers in, and from there on, we negotiated with their lawyers.

Now, there are a lot of things we negotiated about. There are many details, Senator. If I were to go back and reconstruct, I could probably spot things in the decrees that were points at issue that they were very concerned about, and so on and so on. Some of them are of some importance.

As Mr. Kleindienst said, we changed our deal, in effect, on Grinnell. We also changed the wording of the "No further acquisitions" provision. I originally had had in there that on acquisitions of \$10 million, they had to affirmatively prove that it would not have an adverse effect on competition.

We finally came to the conclusion that that was probably unrealistic, and we developed a new formula. Those were important negotiations.

Senator KENNEDY. It would just like to explore one other area, then I'll yield. I have some other questions but I would like to leave time for others.

Mr. Kleindienst, when was the first time you heard the name of Dita Beard?

Mr. KLEINDIENST. Several days ago.

Senator KENNEDY. Have you ever met her?

Mr. KLEINDIENST. I have never met her.

Senator KENNEDY. Could you tell us how you first heard about her?

Mr. KLEINDIENST. Well, I subscribe to the local press.

Senator KENNEDY. That was the first time?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. And you did not hear about it before it appeared in Mr. Anderson's column?

Mr. KLEINDIENST. Well, I was just about ready to amend that. I either heard about it when it came out in the column, or our public information office got it the night before and I was advised of it, Senator. But it would have been either the night before or the day that it appeared in the press.

Senator KENNEDY. And did Mr. Mitchell ever have a conversation with you about Dita Beard?

Mr. KLEINDIENST. Yes. I've talked to him about it since this came out.

Senator KENNEDY. He never had a conversation with you about Dita Beard before the last few days?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He never talked to you about it?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Could you tell us what he told you about Dita Beard when you did talk to him the last few days?

Mr. KLEINDIENST. Well, he related to me the circumstances where he met her, at a reception in the Governor's mansion at or about the time of the Kentucky Derby. He said that that is the only time he had ever met her in his life and he told me that he had a very brief conversation with her—you know, just a momentary conversation with her.

Senator KENNEDY. You do not remember—did he say what it was about?

Mr. KLEINDIENST. Well, he did not say anything except the fact that he said he would not talk to her. She wanted to talk to him about this matter and he told me that he told her he wouldn't talk to her about it.

Senator KENNEDY. And you weren't aware through your congressional contacts or otherwise of Dita Beard's interest in the ITT case?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. And have you been aware of or acquainted with anyone in the Washington office of ITT, or the counsel of ITT?

Mr. KLEINDIENST. Well, I met Mr. Aibel at the April 29 meeting, and I know John Ryan. I do not know what his function or position is with the company, based upon what I previously testified. And I have met Mr. Rohatyn.

Then I was introduced to those persons who were at the April 29 meeting in Mr. McLaren's office. To my knowledge, those are all of the persons of ITT that I've ever met.

Now, I might have been introduced to somebody without their telling me that they worked for ITT.

Senator KENNEDY. And did any of them, other than those you have described here this afternoon, contact you directly or indirectly with regard to any settlement or negotiations?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Did you ever have any business or legal dealings with ITT?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Over the Sheraton Hotels?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Or any ITT subsidiaries?

Mr. KLEINDIENST. To my knowledge, any subsidiaries or anything under the control of ITT before I came into the Government or since.

Senator KENNEDY. Did you know Mr. Geneen—Mr. Harold Geneen?

Mr. KLEINDIENST. I've never met Mr. Geneen.

Senator KENNEDY. Just, finally, Mr. Rohatyn, when Mr. Kleindienst called you to inform you of the staff recommendations for the settlement, when was that? Do you remember that date?

Mr. ROHATYN. That was on June 17, sir.

Senator KENNEDY. And who else did you inform about the call from Mr. Kleindienst?

Mr. ROHATYN. Mr. Geneen, sir.

Senator KENNEDY. Did you inform Mr. Aibel of the Kleindienst call, or just—

Mr. ROHATYN. I am sure, Senator, that within the 24 to 48 hours after the call that I had from Mr. McLaren and Mr. Kleindienst, I spoke to Mr. Aibel about it. But I remember reporting to Mr. Geneen.

Senator KENNEDY. With whom else did you speak in that 24-hour period?

Mr. ROHATYN. It would be Mr. Geneen, Mr. Aibel, and probably Mr. Henry Sailer of the Covington & Burling firm.

Senator KENNEDY. And Mr. Aibel is the general counsel, is that right?

Mr. ROHATYN. Yes, sir.

Senator KENNEDY. Do you know as a director of ITT whether there was any inside sale of stock, ITT stock?

Mr. ROHATYN. I believe the matter is under investigation by the SEC, sir.

Senator KENNEDY. Do you know? I am asking you. Do you know?

Mr. ROHATYN. I do not, sir.

Senator KENNEDY. You do not know?

Mr. ROHATYN. I do not.

Senator KENNEDY. Would you, as a director, have information? Would you know if one of those—

Mr. ROHATYN. I know there is some litigation on it, Senator.

Senator KENNEDY. Would you, as a director, have cause to know if there was a sale of stock by anybody?

Mr. ROHATYN. By an officer of the company? Waiver—

Senator KENNEDY. You can say, yes, I could, and not answer any more about it.

Mr. ROHATYN. No, no. I want to give you the exact procedure, Senator.

At the executive committees of the board, I believe the matter of waivers, involving sales of stock by company officers, options, and related compensation questions, do come up. So that as a director in a formal way, sooner or later, I would know.

Senator KENNEDY. Do you know if Lazard Frères had any sale of stock about this period of time in ITT?

Mr. ROHATYN. Lazard Frères, I believe, had purchases and sales of stock during the entire period.

Senator KENNEDY. Just after, did you know there was going to be any sale of it? Do you know from any personal information whether there was any sale of ITT stock?

Mr. ROHATYN. For Lazard Frères' account: No, sir.

Senator KENNEDY. You do not know or—

Mr. ROHATYN. The answer is: No, there was not.

Senator KENNEDY (continuing). Or there was not? Mr. Kleindienst, then I'll yield—we have heard a great deal about—one of the reasons, of course, that there has been so much, I would think, interest about the Attorney General and ITT—you are aware of the press releases that were put out by the Department of Justice in August of 1969, where it says the Department of Justice today filed two separate anti-trust suits to prevent ITT from acquiring Hartford Fire Insurance-Grinnell Corp.

Attorney General John Mitchell said that both suits were filed in the U.S. District Court for the District of Connecticut. Then he said both suits are barred.

Mr. KLEINDIENST. I have no present recollection of that press release.

Senator KENNEDY. But he did not, as you have pointed out, have anything to do at any time, to your information, about this?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Other than that conversation that he related to you about Mrs. Beard; you never heard him mention the ITT case?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Thank you very much, Mr. Chairman.

I have taken up a lot of time. I have a few other areas, but I would like to yield.

Mr. McLAREN. Senator, may I just comment on that press release?

Senator KENNEDY. Yes.

Mr. McLAREN. I am afraid that is an oversight of the Antitrust Division. We prepare these things, and the normal thing is for the second paragraph to have the Attorney General say where the suits were filed. It was pure oversight, I am sure, in my division. The Attorney General had nothing to do with that.

Senator KENNEDY. I think that is a good explanation for it, one which I would accept.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Thank you, Mr. Chairman, Senator Kennedy.

Mr. Kleindienst, gentleman, I am not too sure there are too many questions that are totally new. Perhaps in an effort to get a better definition of what has actually happened and what has not happened, so we could clear the air, maybe a little different slant on some of these questions would be helpful.

I do not want to be repetitive or redundant.

Mr. Kleindienst, let me just ask a few questions of you. You have answered several already.

From the way I understand the previous testimony, your general role in antitrust matters was, while the judge was there, to turn those matters over to Judge McLaren?

Mr. KLEINDIENST. Well, I have two roles in antitrust matters, as the Deputy Attorney General: one, to discharge the statutory duties of the Attorney General when he disqualifies himself; and, secondly, to have just a very broad general overview of antitrust matters for which the Attorney General himself is directly responsible.

I have a meeting at 8:15, or I usually do, at 8:15 in the morning every day in the week on a rotating basis with an Assistant Attorney General or a division head. I met every 2 weeks with Mr. McLaren, and usually he would bring Mr. Comegys and at that time he would review for my benefit all of the major antitrust cases, or any antitrust problems that he thought I, as the Deputy Attorney General, should know about. That pretty much was the extent of my involvement in antitrust matters for the past 3 years.

Senator BAYH. I ask these questions because I think we all realize that the propriety of Mr. Rohatyn—by the way, how do you pronounce that?

Mr. ROHATYN. Rohatyn.

Senator BAYH. Having been called Bay a few times, I just wanted to get it straight.

The propriety of Mr. Rohatyn's approach to you and the visit you had has been one of the subjects under question here. I think the visit you and he had in your general duty and general expertise as Deputy Attorney General, and now as Attorney General, did not hide the fact that you aren't an expert antitrust lawyer.

Mr. KLEINDIENST. I am not an expert antitrust lawyer.

Senator BAYH. I suppose the same thing could be said about being an economist or financial analyst.

Mr. KLEINDIENST. I'm neither of those.

Senator BAYH. And for those reasons, you generally let Judge McLaren run with the ball in dealing with those ITT petitions trying to get justice for themselves and the company?

Mr. KLEINDIENST. In the ITT case, however, keep in mind that I was acting as the Attorney General in those cases, that with respect to those, I did not have—I could not have as a result of the duty imposed upon me by law—the casual relationship with them.

Senator BAYH. Well, I still find difficulty here. I remember you saying that if Mr. Rohatyn had been a lawyer, you would not have talked to him.

Mr. KLEINDIENST. I would not have; no.

Senator BAYH. You would have sent him to Judge McLaren.

Mr. KLEINDIENST. I would have; yes.

Senator BAYH. Thus, the reason you listened to his petition was the economic argument that he presented?

Mr. KLEINDIENST. Yes, sir.

Senator BAYH. Trying to get the ground rules set.

Mr. KLEINDIENST. I felt I had a duty to do that, Senator, based upon what he represented to me, because that seemed to be a consideration that went just beyond antitrust enforcement, or it had

involved in it elements that affected the economy, large numbers of stockholders of a major company, balance-of-payments situations.

Senator BAYH. Was this information made available to—the way I understand it, the appointment was established by your secretary. Is that accurate?

Mr. KLEINDIENST. No. As a result of the telephone conversation I had with Mr. Rohatyn.

Senator BAYH. Fine.

Then you knew the whole argument from the beginning, that the whole presentation was going to be in the economic area?

Mr. KLEINDIENST. Yes. He specified that on the phone—financial. The Judge says financial, and you and I are saying economic.

Senator BAYH. Well, you know, in our country-lawyer lingo, as long as we understand each other, we'll ask the judge to be tolerant. I know he will.

Could you tell us why, knowing that this is going to be an economic presentation of the *ITT* case, knowing how complicated it was and how much was involved, why didn't you have somebody who was an expert in that area in that first meeting to give you some better judgment—you being one who, by your own admission, is not an expert in that?

Mr. KLEINDIENST. Well, I don't know why I didn't. I just thought I would hear him.

Senator BAYH. You then passed him on to Mr. McLaren?

Mr. KLEINDIENST. No. I told him when he left that I would talk to Mr. McLaren and see whether or not Mr. McLaren would be willing to have such a meeting. Up to this point, Mr. McLaren had been pretty rigid in his dealings with the lawyers for *ITT* with respect to settlement. I believe that he never, up to this point, moved off of the position that any settlement with *ITT* had to include a divestiture of Hartford.

Senator BAYH. I wanted to get to, to try to find out whether this case was handled any differently than any others. You say that in the end, in all the decrees and all the negotiations, and all the positions that have been assumed by the Justice Department, you relied on Judge McLaren's expertise and you didn't disagree at all along the line as far as the position of the Justice Department?

Mr. KLEINDIENST. You mean insofar as my duties in the Department?

Senator BAYH. Yes.

Mr. KLEINDIENST. Yes, I disagreed with Mr. McLaren, in one case in particular.

Senator BAYH. In this case, on the *ITT* case?

Mr. KLEINDIENST. No, I didn't disagree with him on *ITT*.

Senator BAYH. That's what I asked.

Could you explain the distinction between your going along and relying on Mr. McLaren's expertise in the *ITT* case and your overruling his expertise in the *Warner-Lambert* case? What circumstances were different in that case, please?

Mr. KLEINDIENST. I would like to try to describe that.

As I indicated earlier, Senator Bayh, the three *ITT* cases were filed in the year 1969, when I first came to the Department of Justice. I really relied completely on Mr. McLaren's assertions to me with re-

spect to them. I have a very, very hazy recollection, if anything at all, with respect to any conversation I had with Mr. McLaren concerning those cases. They were consistent with the policy that he and Mr. Mitchell had publicly established, consistent with the understanding that we had with them when he came aboard.

I had then—I still have today—the highest regard for his knowledge and expertise in this field. In the *Warner-Lambert* situation—this was the most unique situation that I've had to deal with, I think, since I've been with the Department.

I was in, I believe, Phoenix, Ariz., on the weekend of November 6, 7, 8, and 9—or 7, 8, and 9, whatever the dates were. I received a call, I believe on a Friday night or a Saturday night, I don't remember which, from Mr. Mitchell, in which he asked me when I was going to return to Washington, D.C. I said that I planned to return on Monday or Sunday night, to be in the office on Monday.

He asked me if I had any appointments scheduled on Monday and I said, "I don't know."

He said, "Do you think you could cancel them?"

I said, "I think I could; for what reason?"

He said, "Well, Mr. McLaren brought up a proposed injunction to me today," on Friday—or if he called me on Saturday, he said "yesterday," but I believe it was a Friday night—"I have a conflict of interest situation in that case, and have to disqualify myself. The complaint seeks to enjoin a merger that's going to take effect on Thursday, November—well, the following Thursday—and you're going to have to determine between 1 day when you get back and sometime on Wednesday, whether or not the Department is going to file the lawsuit and seek the injunction to prevent the proposed merger of Warner-Lambert and Parke, Davis."

I told him that I would call my secretary, or I think maybe I asked him to have his secretary get hold of my secretary and cancel my appointments on the following Monday.

When I came back, the files had been placed on my desk in that matter and were there waiting for me on Monday.

Mr. McLaren was out of the city on that Monday. I think he was up in New Haven some place, but he wasn't there. I read over the files, and, incidentally, the representatives of these two companies had requested a meeting with me to discuss this matter on Monday.

I believe I met with them on Monday afternoon.

I read over the prosecuting memorandum presented by the Anti-trust Division and the other matters contained in the file. I then had a meeting with the attorneys and officers of Warner-Lambert and Parke, Davis. They made some very strong assertions and statements to me.

I then studied the file that Monday night.

On Tuesday morning—I believe it was Veteran's Day—I attended the Veteran's Day ceremony at the cemetery, and came back to my office. I believe I had a conference with Mr. McLaren on that Tuesday, but I'm not sure.

In any event, I determined that an injunction should not be issued by the Department of Justice.

On Wednesday noon, Mr. McLaren and I met again, in which we discussed the matter. He disagreed with that decision on my part. I stuck with my decision, in which I said that under these circumstances

and at this late hour, with such short notice, with the proposed merger to be consummated the next day—and for some other reasons that I'll come to in a second, Senator—I persisted in my position.

At that luncheon, however, Mr. McLaren and I did agree that the matter should be referred to the Federal Trade Commission, which has concurrent jurisdiction in civil actions of this kind, and which Mr. McLaren indicated to me was having some investigations in the ethical pharmaceutical field.

I told Mr. McLaren that the reasons for my position in the Warner-Lambert case were essentially as follows:

No. 1, the proposed merger did not come within the Department's own guidelines, the guidelines that they publish with respect to acquisitions did not cover this case.

No. 2, in the meeting with the Parke, Davis and with Warner-Lambert officers and attorneys, a representative of Parke, Davis, whose name I don't know, indicated to me that if this merger did not come about, Parke, Davis was going to have to get out of the research business. I felt that that would have a bad effect on competition in the pharmaceutical industry.

I might say that after our decision, Parke, Davis repudiated that statement publicly. They denied they ever said that. But they did say that to me in that meeting.

Second, at that meeting, a representation was made by some representative of either Warner-Lambert or Parke, Davis that Dr. Edwards at HEW had said that this merger would not interfere with competition.

Finally, I arrived at the opinion not to file the injunction because, even after the acquisition by Warner-Lambert of this company, it would have no more than 5 percent of the market, and this was not a concentrated industry type of business. I think the largest portion of the market by any company was, as I recall, 8 or 9 percent. That might not be correct, but that's my recollection, that there were many companies in the field and it was not concentrated and there was a lot of competition.

But I think the thing that disturbed me more than anything else was, and I think this is the only situation that I ever had in a friendly way to be kind of critical of Mr. McLaren, was the fact that for one reason or another, the Antitrust Division did not get the prosecuting memorandum and the recommendation for the filing of the complaint up to Mr. Mitchell's office until Friday, the Friday before the proposed merger was to take place.

He had to disqualify himself; I was out of town. I got back, and I really had only about 2 days within which to make a very fundamental decision involving two very significant companies.

I think the thing that really tipped it in my mind is the fact that the prosecuting memorandum from the Department itself to the Attorney General—in this case, myself—said that while this case does not come within our guidelines, we think for other reasons that we ought to proceed with it.

Those are essentially the reasons why I arrived at that decision in that case.

Senator BAYH. What concerns me about that, Mr. Kleindienst, is that it seems to me that it might be fair to suggest that you handled the cases a little differently there.

Mr. KLEINDIENST. I agree with you on that one.

Senator BAYH. You took a good deal more responsibility on the Warner-Lambert case than you tell you did on the ITT case.

Mr. KLEINDIENST. I sure agree with you on that, Senator Bayh. The thing about it, though, is that these two corporations were going to have their merger meeting on that Thursday.

Senator BAYH. There was no other action that could have been taken to persuade them?

Mr. KLEINDIENST. Sir?

Senator BAYH. What kind of a legal procedure would have been implemented if Mr. McLaren, Judge McLaren, had had his way?

Mr. KLEINDIENST. They would have gone into court and sought an injunction to prevent the acquisition from taking place.

Senator BAYH. Would that have been a permanent injunction or a temporary injunction? Would that have permanently solved the case, or irreparably damaged either of the companies?

Mr. KLEINDIENST. What you do is get a restraining order on the merger and ask for a trial on the merits. If we lost the trial on the merits, they would have had to postpone their merger for a number of months, or whatever time it takes to have a hearing.

Senator BAYH. What concerns me a bit is on the one ITT matter, the whole business was turned over to Mr. McLaren. A study was conducted that determined what the Department's position was to be, and the previous case was decided, at least partially, by what you just told me, on information that later was repudiated by the company that made the statement.

Mr. KLEINDIENST. I would have made the same decision had not the statement been made by the Parke, Davis fellow, or the statement attributed to Dr. Edwards. The primary consideration, in my opinion, was that it was not within the guidelines of the Antitrust Division; and, No. 2, I felt that because of the nonconcentrated nature of the industry, there wouldn't have been a sufficient impact on competition had the merger come about.

Senator BAYH. Judge McLaren, is it fair to ask you why you would proceed or recommend that the Government proceed on a policy that was not within the Department's guidelines?

Judge McLAREN. Well, the guidelines that Mr. Kleindienst referred to, I'm sure, referred to the guidelines put out by Mr. Turner in 1968, which I substantially followed. He's perfectly correct that this particular merger on a horizontal basis, which would be the primary test here, did not violate the guidelines.

We were concerned that it would eliminate competition between two very important, as we felt, elements in the pharmaceutical industry. It is an extremely important industry to the health and welfare of the country, and we felt that there were cases—the *Von's*—*Von's Grocery* case, and *Pabst Beer* case, where percentages on this order would make it reasonably likely that we would get a finding of violation here. So I was in favor of filing the case.

We would have gone in and tried to get a preliminary injunction. We probably would get a temporary restraining order, which is in effect up to 10 days, as you probably know. Then you have your hearing for preliminary injunction. And on that, you have almost a full trial and the argument is always made by the defense that we never really

get a trial in court, because if you enjoin us, the preliminary injunction will be in effect for a year or 2 years; we just cannot hold this merger for that long and, therefore, we'll have to drop it.

Senator BAYH. But it would have been possible to postpone this for 10 days while more study was given it?

Judge McLAREN. It could have been postponed and we could have gone into the preliminary injunction hearing. I might add that in all the time I was in the Department, I think we won just one of those preliminary injunction requests. In other cases, we were turned down, and those cases are slogging their way through the courts.

Again, I refer to the fact that we have asked, or the Department asked, repeatedly, for legislation that would give us the right to appeal in those denials.

Well, aside from that, we did recommend this case. I can understand Mr. Kleindienst's feeling about it. He has, incidentally, learned a lot of antitrust law in 3 years.

I argued with him about it. I thought we should file it. He could not really see why it was justified, since it did not violate the guidelines and the companies had made this pitiful argument on how they would never get their day in court if we went ahead and got a preliminary injunction, and so on. I just was not able to persuade Mr. Kleindienst.

I did think we had a case, and in view of the fact that he would not go along and do it on my recommendations, I urged him to refer it to the Federal Trade Commission, which would give me, in effect, a review of what I thought was a violation, and he agreed to go along.

As I have said before, in newspaper interviews, I think this was a rather courageous action on his part, because he certainly got all the flak that was possible from the friends of antitrust, some self-appointed, and certainly, if he were doing it for a political purpose, he did not make any friends. If he were going to be political, he would have just killed the case right then and there.

I've never been quite able to understand the publicity and the discussion of this particular matter.

Senator BAYH. Have you ever had any other areas where the two of you gentlemen have disagreed? Perhaps, was there request for one of these similar efforts, a preliminary injunction in the *ITT Canteen* case?

Judge McLAREN. I don't remember any dispute on *ITT Canteen*. I recall that there was some time that passed between the time it went upstairs and the time it was approved.

Senator BAYH. You never wanted to get a preliminary injunction in that case, or did you not have differences of opinion?

Judge McLAREN. We didn't go for one. I'm trying to think back. In 1969, the time got very short. I know that. I was also quite concerned about the possibility of getting a preliminary injunction in that case. That case relied heavily on, first, the power to engage in reciprocity; and second, the trend of mergers that ITT was engaging in. I had some concern as to whether we would be successful in getting a preliminary injunction. In any event, we did not go for it.

There has always been the repeated statement, I think in the Nader's Raider's report, that I threatened to resign over that, that I made a trip to the White House and threw my weight around, and—I'm still

under oath—I categorically deny that that happened. I never did threaten to resign; I made no such trip to the White House.

Senator BAYH. You didn't throw your weight around?

Judge McLAREN. I hope I've not been guilty of that, Senator.

Senator BAYH. Well, thank you, Judge.

Senator HART. Would the Senator yield there, to clarify, if you can, on this point?

Senator BAYH. Yes.

Senator HART. Did you recommend in writing to Mr. Kleindienst that a preliminary injunction be obtained in this one ITT case?

Judge McLAREN. I have no doubt that I did, Senator, in what we call the AG memo that sent the case up originally. There was a passage of time between my memorandum and the time we got the authority to file, during which time—and we were closer and closer to the day when they would close. You make an awfully bad impression on our trial judge if you come in there the day before a closing and say, let's stop this whole thing.

Senator BAYH. Please proceed. I thought that was the question I had asked. I didn't word it very well, apparently.

Senator HART. Just to get an answer from this morning perhaps clarified, there was this disagreement between you and Mr. Kleindienst in the handling of one of the ITT cases?

Judge McLAREN. Well, I can't remember any disagreement or any discussion of disagreement. I recall that there was delay.

Senator HART. Let me define "disagreement" as including a memorandum recommending one course and the rejection of the memorandum?

Mr. KLEINDIENST. No, sir.

Judge McLAREN. Well, I can't say that he rejected it. Ultimately, the recommendation to sue was approved and was sent back down to me with the signed complaint.

Senator HART. But not to proceed for the temporary?

Judge McLAREN. Sir?

Senator HART. But not to proceed for the preliminary?

Judge McLAREN. Yes; I think I had authority to do that, too. In other words, when he approved it, he signed approval. If I recommended the preliminary injunction, that would have been approved along with the filing of the case. But I just don't recall, other than the passage of time, and it came down very late in the game. I just don't recall more than that.

Senator HART. Mr. Kleindienst, do you want to respond?

Mr. KLEINDIENST. Senator Hart, I have no recollection of refusing to authorize anything in the *Canteen* case that Mr. McLaren recommended. If I did, it's beyond my recollection today.

Senator HART. The files would resolve this?

Mr. KLEINDIENST. Yes, sir.

Senator BAYH. It has been a while. Perhaps it would be only fair to suggest that if that's not the case, it would be possible to supplement the record if you find out differently.

Mr. KLEINDIENST. We'll certainly be willing to do that on the complaint in that case.

Senator HART. Thank you.

Senator BAYH. May I get back, Mr. Attorney General-designate? Looking again, if there are distinctions in the way the *ITT* case was handled and other cases—or if there are not—here you had Mr. Rohatyn discuss this matter with you. Were there other cases where you received calls from members of the board of directors of other corporations that were before the Department—where you sat down and talked with them?

Mr. KLEINDIENST. I don't believe so, Senator Bayh. I think, although I'm not positive, that the only antitrust cases where I had to act as the Attorney General were the three *ITT* cases and the *Warner-Lambert* case. That's the only recollection I have. There might be in the record, but I can't think of any other cases.

Consequently, it wouldn't be my general responsibility in *ITT* cases to sit down and talk with corporate officers or be involved in that kind of policy decision in cases where the Attorney General himself had primary cognizance.

Senator BAYH. May I go just one more time to the type of discussions and the influences, or lack of influence, that you thought you had in this overall decision.

Mr. KLEINDIENST. Of the what decision?

Senator BAYH. In the overall decisions on *ITT*. You're familiar with the wording that we discussed yesterday—the O'Brien letter that says something to the effect that the settlement between the Department of Justice and *ITT* was handled and negotiated exclusively by Assistant Attorney General McLaren.

Now, it is your contention that this was really not a negotiating conversation that you had?

Mr. KLEINDIENST. That's absolutely my contention. I think in the context of the rather insinuating and inflammatory rhetoric of Chairman O'Brien in his letter, and based upon the limited involvement I had with Mr. Rohatyn, that is to say, to set up a meeting by which his company could present to the antitrust staff and other people in the Government, the financial-economic crisis argument is, in my opinion, completely removed from any suggestion that I negotiated or handled the settlement in the *ITT* Hartford matter and the Canteen-Grinnell matters.

I think, as the testimony of Mr. McLaren pointed out, my testimony and that of Mr. Rohatyn, I did not inject myself in those settlement negotiations at all. And even twice, when Mr. Rohatyn came to my office after they commenced to complain about the hard-headed, rigid posture of Mr. McLaren. I told him that I wouldn't inject myself in those negotiations and that his company's lawyers and Mr. McLaren and his staff were to work those negotiations out.

I believe that my statement in that letter to Chairman O'Brien, in view of all the facts and circumstances, is justified, is clear, and is unequivocal.

Senator BAYH. I think what we're trying to get are all the facts and circumstances and get them out on the record so we'll clear this up.

Mr. KLEINDIENST. That's what we're here for, and I think we have given it to you.

Senator BAYH. I don't think it's necessary, nor is it my intention, to make apologies by either one of our national chairmen.

As I have heard the facts in this case disputed, is it fair to assess your role, despite what influence you may or may not have had, that the act of Mr. Rohatyn of talking to you resulted in the Government of the United States moving from a position of prosecution to one of negotiation?

Mr. KLEINDIENST. Yes, I guess I set in motion a series of events by which Mr. McLaren became persuaded that, for the reasons heretofore discussed, he ought to come off his position with respect to a divestiture of Hartford by ITT. That's a fair statement.

Senator BAYH. Can you tell me why Mr. Rohatyn—I'm going to ask him, too—but, in your judgment, why did Mr. Rohatyn keep coming back to you inasmuch as you kept turning this over to Mr. McLaren?

Mr. KLEINDIENST. Well, he only did it twice.

Senator BAYH. You had more than two meetings with him, didn't you?

Mr. KLEINDIENST. He only came back to me twice.

Senator BAYH. How about phone calls?

Mr. KLEINDIENST. No, sir. After the June 17 reading of the settlement framework, Mr. Rohatyn came to my office twice—I think on June 29 and July 15—to complain about the harshness of the negotiations being conducted by Mr. McLaren.

Senator BAYH. He hadn't gotten the message that you were "hands off" on this, that McLaren was going to run the show as far as the ITT case?

Mr. KLEINDIENST. Well, he got it on June 17, he got it on June 29, and he got it on July 17. But this was a very serious matter to this man's company, and I believe if you are a responsible officer of the Federal Government and if you're dealing with legitimate people as companies, and they're in a situation that is of extreme, dire consequence to them, I believe you have some obligation to listen to them regardless of what you do.

Because that's who we serve. We serve ITT as well as anybody else in this Nation. I think I have that duty.

Senator BAYH. I think the question there that was raised by Chairman O'Brien and by Senator Hart is: At what point can we say this starts to be part of the negotiations? You have a responsibility to listen, to be sure. And I hope whoever is Attorney General—and, when you are Attorney General, you—will continue to act that way. But is that or is that not part of the negotiating processes?

Mr. KLEINDIENST. I think, Senator Bayh, as a result of what has been revealed here today, that is all I did do in that case is listen, except talk to Mr. McLaren and ask him whether or not he would be willing to have such a meeting. He said he would, he set the meeting up, I went to it and listened, Mr. Rohatyn came back twice and I listened to him, that is all I did. I do not think that is negotiation.

Senator BAYH. Well, I think everything that has happened has been laid on the record here and everybody can make their own determination.

Mr. KLEINDIENST. Yes, sir.

Senator BAYH. That is what we are after.

Mr. KLEINDIENST. That is for the Senate of the United States to decide.

Senator BAYH. Let me throw a couple of other questions at you that have been raised in the press. In the course of this whole business, did you ever talk to anybody down at the White House staff, any advisers to the President, on the ITT matter?

Mr. KLEINDIENST. Not that I can recall. It is possible that some casual reference could have been made to it, but so far as discussing any policy or any aspect of the case, I did not and I do not discuss antitrust matters there.

Senator BAYH. Could you be a bit more definitive? It leaves an uneasy feeling in the pit of my stomach when you talk about casual references when you realize the significance of this case, politically, economically, financially.

Mr. KLEINDIENST. You asked me did I discuss the ITT matter with the White House. I do not recollect doing so. But I am on the telephone almost constantly, throughout a day or a week, with somebody on the White House staff or another with respect to some aspect of the operation of the Department of Justice.

For me to say that no one in the White House with whom I might have talked would not have raised the ITT question, I would not be prepared to say that.

So far as discussing with anybody on the staff of the White House what I was doing, what do you think I ought to do, what do you feel about it, what are your recommendations—no.

Senator BAYH. No suggestions coming from the White House as to what action should be taken by the Justice Department?

Mr. KLEINDIENST. No, sir.

Senator BAYH. Let me go to just one last matter relative to the alleged—and I use that word——

Mr. KLEINDIENST. Relative to what?

Senator BAYH (continuing). I use the word “alleged” technically—involvement or relationship between the ITT antitrust matter and that San Diego matter.

Mr. KLEINDIENST. It is alleged only, Senator. It is not a technical use.

Senator BAYH. That is why I used the word, because we have not had any evidence to the contrary before now.

When did you first find out about this offer?

Mr. KLEINDIENST. About the San Diego convention?

Senator BAYH. Yes.

Mr. KLEINDIENST. It was some time in December of 1971; my recollection serves me that it was when I was coincidentally in San Diego at a regional meeting of U.S. attorneys that the first public reference to this alleged tie-in was ever revealed. But it was not until December.

Senator BAYH. Nobody brought this matter to your attention in the latter part of November when it appeared in the Washington Star?

Mr. KLEINDIENST. Well, whenever that first became public, Senator Bayh. But my recollection is that it was around December 3 when I was in San Diego. But whenever it appeared in the public press, that is the first time that I had ever heard about it.

Senator BAYH. And nobody brought this matter to your attention when Congressman Wilson from San Diego in August released the first press report out there?

Mr. KLEINDIENST. No, sir; I was out of the city in the month of August with my family on a vacation.

Senator BAYH. You really have no knowledge of such a thing?

Mr. KLEINDIENST. Absolutely no knowledge of any kind whatsoever from any person at any time.

Senator BAYH. Thank you. Until, I think you said, early in December.

Mr. KLEINDIENST. Well, I am just trying to use a recollection, Senator.

Senator BAYH. Well, first of December, last of November.

Thank you, Mr. Kleindienst.

Mr. KLEINDIENST. Thank you, Senator Bayh.

Senator BAYH. Mr. Rohatyn, I would like to try to clarify some things in my own mind with you, if I may.

Your present relationship with this matter is and has been for the last 4 years as a member of the board of directors with ITT?

Mr. ROHATYN. Yes, Senator.

Senator BAYH. And the firm in which you are a partner—does that firm advise and counsel ITT in other matters, various matters besides this particular case?

Mr. ROHATYN. Yes, sir; we are one of two investment bankers for the company.

Senator BAYH. How long have you had that kind of relationship with ITT?

Mr. ROHATYN. Since I went on the board.

Senator BAYH. I think in your statement you said unequivocally that you have never heard of Mrs. Beard?

Mr. ROHATYN. Yes, Senator. The first time I heard of Mrs. Beard is from Mr. Hume's reading of this memorandum on Sunday night.

Senator BAYH. The matter of who does the lobbying and who runs the Washington operation of ITT, then, is not a matter of general discussion before the board?

Mr. ROHATYN. No, sir.

Senator BAYH. I do not believe that the content of the conversation you had with Mr. Geneen who I understand is the one who relayed the message from Mr. Ryan relative to the conversation with Mr. Kleindienst at the spring picnic has ever been brought up before the committee. Mr. Geneen was the one who asked you to see Mr. Kleindienst?

Mr. ROHATYN. I believe that is right, Senator, and again this is to the best of my recollection, because there were many meetings.

Senator BAYH. Do you remember what he said, why you were supposed to see the Deputy Attorney General?

Mr. ROHATYN. Senator, I remember why I was supposed to see the Deputy Attorney General and that is because we had a conviction and I had a conviction that the financial and economic impact of the Hartford divestiture went considerably beyond simply antitrust policy, that there were some balance of payments and some security markets and some overall national economic policy issues involved. I was told that the Deputy Attorney General would receive me to hear just those arguments, that he would not listen to arguments or negotiations with respect to the actual case itself, but that I could make those arguments.

Senator BAYH. You are an expert in this area, sir. How long have you had those concerns?

Mr. ROHATYN. On this particular case, sir? Well, may I answer the question maybe somewhat differently, Senator?

As a director of the company, from the initial filing of the cases, we have always had the view that the disposition of the Hartford could not be a part of a settlement with the Department of Justice in terms of the economics of the company. This is a view we have had. I would say, for a year or a year and a half, 2 years.

Senator BAYH. Since the case was filed?

Mr. ROHATYN. Yes, sir.

Senator BAYH. You as one who is an expert on the board in the economic area particularly, the financial area, have felt that this divestiture would pose a severe hardship to ITT?

Mr. ROHATYN. Yes, Senator.

Senator BAYH. And thus the divestiture of Hartford would not be acceptable economically?

Mr. ROHATYN. Yes, Senator. And I made that case, Senator. I made it orally to Mr. Kleindienst and then I made that formally with supporting memoranda and with Dean Willis Winn of the Wharton School and with Raymond Saulnier of Columbia to Mr. McLaren.

Senator BAYH. Have you had previous experience dealing with the Justice Department?

Mr. ROHATYN. I have had no dealings with the Justice Department prior to that.

Senator BAYH. Could you try to give us some understanding as to why—given the fact that Mr. McLaren was head of the antitrust division—why you were asked to see Mr. Kleindienst instead of Mr. McLaren?

Mr. ROHATYN. My understanding, Senator, was because the issues I was raising were issues of national economic policy, they were questions of international balance of payments, questions of security market impact, which were not areas directly within the responsibility of the antitrust division.

Senator BAYH. Did anybody in ITT approach any of the other departments of the Federal Government that had more specific authority over those ingredients?

Mr. ROHATYN. I have no knowledge.

Senator BAYH. Department of Commerce?

Mr. ROHATYN. I do not know, Senator.

Senator BAYH. Secretary of the Treasury?

Mr. ROHATYN. I do not know, Senator.

Senator BAYH. Let me ask this question again so I can keep the sequence in my own mind.

How would you characterize the conversation you had with Mr. Kleindienst with specific reference to whether it was presenting your case whether it was part of the negotiating process, or—

Mr. ROHATYN. The one on April 20, Senator?

Senator BAYH. Yes, the initial meeting.

Mr. ROHATYN. It was presenting my case, Senator.

Senator BAYH. You did not feel that was part of the negotiating process?

Mr. ROHATYN. Absolutely not, Senator.

Senator BAYH. Were you misquoted in the press then? It has been alleged that you had a conversation—maybe the airport conversation you described—with, I think, a Mr. Hume, where it says in the newspaper that you said this was negotiating.

Is that a misquote?

Mr. ROHATYN. Senator, I do not know what I said at the airport when somebody caught me 5 minutes before I was stepping on a plane. But I am testifying under oath here and the situation is exactly as I have described it, every bit of it.

Senator BAYH. I asked Mr. Kleindienst—I suppose I should have asked you first—why, after Mr. Kleindienst had made clear, he says he did, and I ask you if he did, and why he did, he made it very clear that Mr. McLaren was making the decisions in antitrust, why was it you kept coming back to him? Why did you not use your influence and persuasiveness on Mr. McLaren?

Mr. ROHATYN. My influence and persuasiveness was obviously wasted on both, Senator. I only went back twice, Senator; after the June 17 telephone call outlining the proposed settlement. I went to see Mr. Kleindienst once more because again, the settlement seemed to me so vast and so harsh and smacking so much of dismemberment of the company, that I was very much concerned, again on the basic policy issue. Mr. Kleindienst absolutely refused to reopen the issue and turned it back to Mr. McLaren.

Senator BAYH. Is it a fair assessment of your value to ITT to say your influence was wasted when the one divestiture that was going to do the most damage to the company, Hartford, was not successful?

Mr. ROHATYN. I would hope I did play a good part, Senator, because I think it was the right thing to do.

Senator BAYH. So you cannot say your influence went to waste?

Mr. ROHATYN. No, sir, I amend that statement.

Senator BAYH. Could I go for just a moment to the importance of the economic argument? You suggested from the initial stages, where the merger was, the divestiture was, you knew you had a problem there. The divestiture of Hartford would do terrible damage to the company.

What were the arguments made by ITT at the trial level?

Mr. ROHATYN. I cannot answer that, Senator. I was no part of the process of this at all.

Senator BAYH. Mr. McLaren, do you remember what the ITT, case, the defense case, was at the trial level? Why did they oppose your efforts?

Judge McLAREN. Well, there were two trials. The first one was in the *Grinnell* case and they put up as a defense the proposition that they were not really all that big, the company was not in the fire protection business and there was a lot of competition and ITT did not engage in reciprocity and would not use its power in other fields to benefit Grinnell, and they managed to persuade the trial judge of that defense.

In the *Canteen* case, similarly, they said that they did not engage in reciprocity and they would not engage in reciprocity, and we were really just attacking them on bigness grounds and a few other arguments like that, and they managed to persuade that trial judge.

Does that answer your question?

Senator BAYH. Yes.

Now, tell us about the status of the *Hartford* case. Were there any pretrial disposition, any briefs filed, that could give us some idea as to what ITT was relying on to oppose the Government efforts in *Hartford*?

Judge McLAREN. Well, they were relying on the proposition that ITT was not in the casualty business, it was not going to lessen insurance competition, and that they would not use the power of Hartford to benefit the other aspects of the ITT operations. And there was a very definite statement of their position. We had a very lengthy preliminary injunction proceeding in that case in which, I think, just about all of the evidence which ultimately would have gone into a trial was brought out.

I might say that the standard for issuance of a preliminary injunction in a Government case of that kind is reasonable probability of success in the long run in the trial of the case itself. And this trial judge ruled against us on that. One of the things he pointed out was that the stockholders of Hartford would lose their \$500 million premium. Well, the other side of that coin is if you let the thing go through, the company is going to say, we are going to be hurt \$500 million when we are forced to divest. And that is what they claimed. And at the risk of unduly repeating myself, we need an amendment of the law in that regard so we can appeal.

May I correct something I said earlier, Senator?

Senator BAYH. Surely.

Judge McLAREN. You were asking me about the *Canteen* case and Mr. Comegys showed me a copy of the complaint and the complaint as signed does not request a preliminary injunction. It refers to the merger as having been completed and it now asks for divestiture.

How that transition from the original proposal that we go in and try to stop them on a preliminary injunction, how the change came about, where we went in after the thing was consummated, I cannot recall. I think that we more or less ran out of time on the thing and that weighing the whole thing, I made a determination not to go for the preliminary injunction. We had pretty well worked out a deal, I think, reading the complaint, that they would, having made the acquisition, hold it separate, as a separate corporation, so if we won the case, it could be divested.

I cannot enlighten you any further on that.

Senator BAYH. Were any efforts like that made in the *Hartford* case?

Judge McLAREN. Oh, I am sure that they proposed to us that we not bring our preliminary injunction on and that we let them consummate and hold separate and so on, and that is ultimately what the court did do. They let them consummate and issued an order to hold separate.

Senator BAYH. Did ITT ever say, well, now, at least don't hit us over the head now, let's go to trial on this and if you win, we will be able to divest?

Judge McLAREN. Sure, and if you prevent the merger from going ahead, we will never be able to hold the deal together until the case is finished, and you are depriving us of our day in court and so on and so on. And the trial judge believed them.

Senator BAYH. How is that consistent with the feeling that you have, and apparently it was generally accepted in the corporation, that this divestiture could never be accepted by the corporation?

Mr. ROHATYN. Senator, I felt that this divestiture would be very destructive to the corporation. Obviously, if the Supreme Court makes us do it, we will do it.

Senator BAYH. But here you have ITT saying at the trial level, don't penalize us now, don't prohibit us from merging now, don't temporarily enjoin us, let's go ahead and argue out the merits, then if we lose, we will divest, then you know in the back of your mind, financially, economically, that ITT could not do it. Is it not possible—

Mr. ROHATYN. It is possible. As I say, I am not a lawyer and I didn't participate in the trial of the *Hartford* case.

Senator BAYH. But it is fair to say that a man who has had significant influence at the Justice Department and certainly has proven his expertise as a member of the board of directors on ITT at the top level management of the company, that they knew it was bad business, but they went ahead and made the promises at the trial level.

Mr. ROHATYN. Senator, all I can tell you is that we had legal opinions that the merger was legal from an outside law firm and from Professor Turner, who was hired to give a special legal opinion to the board of directors and the board of directors felt that it was a prudent thing to do to go ahead and make the acquisition.

Senator BAYH. Well, I will not ask the same question over again, because I think that you as a nonlawyer will give me the same answer, and you should. It seems to me there is a high degree of inconsistency between what the corporation said it was willing to do before a Federal court in response to a prosecution by the Federal Government and what it said or should have known in the board room of the corporation.

Mr. ROHATYN. I think, Senator, there may have been some different circumstances in the meantime. There were changes in the accounting rules, the accounting principles, that changed some principles in a rather technical area, in the pooling of interest areas, since I.T. & T. acquired Hartford with preferred stock. This was one type of acquisition that was subsequently stopped and therefore, a disposition in the same way was no longer practical.

And again, as I say, I did not participate in the discussions at the trial level. But from a financial point of view, and securities market point of view, I believe we were in rather different circumstances in the winter and spring of 1970-71 than we were at the time we acquired the company.

But as I say again, I will just have to plead to you that I did not participate in those discussions.

Senator BAYH. I think you said earlier that from the financial standpoint, you felt in your mind that it would be financially untenable to have a divestiture of Hartford?

Mr. ROHATYN. I said, Senator, I believe that from the time we heard any suggestions at the board level of a settlement that would have to—

Senator BAYH. That is not what you said a moment ago.

Mr. ROHATYN. I said that went back about a year or a year and a half, yes, sir.

Senator BAYH. Well, I recall something else. If you want to change it, let's do it so that no one is misrepresented here. I thought you said in response to something I said a moment ago that at the financial point from the standpoint of trial, when the question of divestiture was raised, in your opinion, it would have been untenable for I.T. & T. to have divested itself of Hartford.

Mr. ROHATYN. I am sorry, Senator. I thought that what I believed I had answered earlier when you raised the question of me on my views of the divestiture of Hartford, that at the time there were settlement discussions that came up to the board from time to time, and that went back maybe a year prior to the discussions that I took part in, the only—

The CHAIRMAN. Your testimony was that from the time the suits were filed in 1969. That was the testimony.

Senator BAYH. Thank you, Mr. Chairman. That is the way I understood it.

Mr. ROHATYN. I am sorry, Senator, I would like to correct it. It would be from the time that we heard that there were suggestions of settlement which might involve the Hartford and we always took the position, then, that it would be too damaging to the company that would have a divestiture that would involve the Hartford.

Senator BAYH. Having never served on a board commensurate with the I.T. & T. board, is it fair to suggest that perhaps one responsibility that a board of directors, has is to consider—particularly in the light of Mr. McLaren's very active pronouncements relative to antitrust policy—is it not responsible for a board to consider what the Federal Government might do in a situation like this, and indeed—although all of us are concerned about stockholders, and certainly the board of directors have a fiduciary relationship to them—is it not fair to suggest that when you get involved in a merger of that type, that you realize one of the possibilities might be that the Federal Government is going to sue you and you are going to have to divest and that this is part of the chance that the stockholder has to take and you as a member of the board have to take? Should that be considered?

Mr. ROHATYN. Certainly, Senator. That is why we had legal opinion, outside legal opinion, that is why we hired Professor Turner, to get an extra legal opinion.

I would also point out to you, Senator, that the acquisition of the Hartford started, if my recollection is correct, in 1968, before Mr. McLaren became antitrust chief. At least according to my recollection, the guidelines on large conglomerate acquisitions are different, as I think Judge McLaren testified to earlier.

And Professor Turner, who had been head of the Antitrust Division in the previous administration, gave us a legal opinion on the Hartford acquisition that was, as I recollect, unequivocal.

Senator BAYH. The merger—what was the date that the merger actually took place?

Mr. ROHATYN. I am sorry, Senator, I do not have the recollection. But I remember that the whole transaction took over a year and a half.

Senator BAYH. There is a point of finality, is there not?

Mr. ROHATYN. Yes.

Senator BAYH. When was that, Judge McLaren? Do you recall?

As I recall, the Government filed suit immediately, did it not?

Judge McLAREN. Well, there is a proceeding first in Connecticut where they had to get permission of the Connecticut insurance commissioner, something like that. My recollection is, and Mr. Comegys is checking, that we held off until we got word of the approval from the State commissioner on the theory that we did not want to get into a matter that was not going to go forward anyway.

When they did get their permission to go, then we went in and filed our preliminary injunction. We had hearings on that and so on. And after the decision on that and they won the preliminary injunction, then they went ahead and merged.

My recollection is that it was sometime in the fall of 1969.

Senator BAYH. You had been running the Antitrust Division and your policy had been pretty well publicized there for some time?

Judge McLAREN. It was not only publicized, it was told to them in person in no uncertain terms.

Senator BAYH. Mr. Rohatyn, I think in your statement, either in your statement or in response to the questions, you suggested that one of the reasons you kept going back two or three times—however many times it was—was that you thought the final settlement was punitive to ITT?

Mr. ROHATYN. It was a harsh settlement, yes, Senator.

Senator BAYH. Was it really?

Mr. ROHATYN. Well, Senator, bear in mind, viewed from the position of a director, that when you have legal opinion that what you are doing is legal, when you have won every case in the lower courts that has come up, when all of a sudden, two companies are included that were never involved in any antitrust litigation, and you finally agree to divest yourself of a billion dollars worth of properties, to me that was a harsh settlement; yes, Senator.

Senator BAYH. What happened to the ITT stock?

Mr. ROHATYN. Well, within 2 days after the announcement, it went down by an equivalent of about a billion and a quarter dollars worth.

Senator BAYH. Then what happened?

Mr. ROHATYN. It came back up, Senator.

Senator BAYH. Thank you.

Let me just throw one other thing at you so we can have it. As I recall, in the record earlier, you said you did not know until December of 1971, about this \$400,000 deal that was supposed to have been made?

Mr. ROHATYN. That is right, Senator.

Senator BAYH. Do you know about it now?

Mr. ROHATYN. Yes, Senator.

Senator BAYH. Can you tell the committee anything about it that we have not heard already?

Mr. ROHATYN. Senator, I inquired of Mr. Geneen, as I felt I should, when I saw this thing in the newspaper. A, about the amounts since there seemed to be some dispute, B, the reason why the company would have made such a commitment and whether this commitment had anything to do with the settlement as far as he knew. He assured me personally, one, that there was absolutely no linkage; two, that the amounts as reported were incorrect, that the company had committed

\$100,000 with an agreement for a further \$100,000 matching contribution, and that in his view, it was a normal substitute for advertising expenditures of the San Diego Sheraton Hotel.

Senator BAYH. How is that kind of decision made? Is nobody on the board taken into consideration, the executive committee?

Mr. ROHATYN. Oh, no, Senator; we would no more go into a thing like that than we would the advertising budget of Avis. This is or should be a routine matter; maybe we will have some different rules in the future. But in any case, expenditures of that kind for normal business purposes would not come up to the board.

Senator BAYH. Were you ever on the board of ITT-Sheraton?

Mr. ROHATYN. No, sir.

Senator BAYH. Thank you, sir.

Judge McLaren, let me throw a few more questions at you very quickly here if I may.

Could you enunciate a bit more specifically the whole reasoning that necessitated or that resulted in your changing your feeling about accepting the negotiation? What really concerns me is that the impact on stockholders is important, the impact on the economy is important. But if we have a corporate merger that violates the law, have we gotten ourselves in the position that if the merger is big enough, it doesn't make any difference what the law says?

Judge McLAREN. Senator, I think that doesn't really fairly express the situation. Let me put it to you this way. I think that a responsible enforcement officer has to take into account the overall impact of what he is bringing about. Up until they came in and proved to my satisfaction that it was going to tremendously weaken ITT and was going to cost their stockholders something over a billion dollars, I saw no reason for settling this case short of a divestiture. I thought that they made their bed, they could lie in it.

Now, when it became clear to me that we were talking about this kind of devastating effect on them, then I began to think in terms of what kind of a settlement we could work out that would achieve our antitrust objectives and would not get into this kind of a tremendous adverse effect upon the company and its shareholders. I use the paring-off kind of analysis that I explained a little while ago to Senator Hart.

If you look at ITT as it was before the Hartford acquisition and you say to yourself, what can I pare off of ITT such that if they had not owned those companies that are pared off, I would not have filed suit against their acquisition of Hartford? Now, one of the things that we objected to was the fact that the Grinnell Fire-Safety Division was tied into this complex and Hartford—

Senator BAYH. May I interrupt?

You have been very kind and I think you have already gone through this.

Judge McLAREN. Yes, sir.

Senator BAYH. And I remember it. It is in the record at least once or twice. I don't want you to have to labor through that again. I understand that weighing and slicing and trying to come up with something that you feel—and I have the greatest respect for your judgment and your expertise—would conform to the law.

What I was trying to get at is what philosophical responsibility do we have in Government? I am concerned about stockholders losing

x millions or billions of dollars. But if the corporation involved is warned by the Federal Government from day one that that is violating the law, that they are going to be in trouble, then what responsibility do we have?

Judge McLAREN. Well, Senator, I could have brought a criminal action and maybe it would have been justified, in hindsight, on the basis of all three of these acquisitions and a lot of others; perhaps a criminal action under section 2 of the Sherman Act might conceivably have been justified. We never studied that.

I think you have to keep in mind that the suits we did file were equity suits designed to restore competition. Now, if I can restore competition by a decree requiring divestiture of some companies and not others and if I can accomplish that without a tremendous adverse impact on stockholders and the company's future viability, then I think that it is perfectly fair to take that into account, to go down that road, because in effect, you are carrying out the spirit as well as the letter, I think, of the Celler-Kefauver Act. I think we did that here.

In fact, I pinch myself, sometimes, Senator. We carried out a \$1 billion divestiture, the biggest in history. We stopped this juggernaut from making acquisitions that we feel are anticompetitive. We stopped this and now I am up here defending it. I really have trouble understanding it, and I would certainly like to have that gal under oath on that memorandum.

Senator BAYH. I am looking forward to that, too.

Let me just touch on one other point. Do you have any problems as a lawyer—from everything you have said earlier, the thrust of the initial case was that the ITT merger just was not covered by the law.

Judge McLAREN. I did not say that. I said that is what Turner and Zimmerman would have said, I think.

Senator BAYH. I am not talking about the Government case; I am talking about the ITT defense.

Judge McLAREN. I don't follow.

Senator BAYH. What concerns me a bit and it is moot now that the settlement has been worked out but here we have, really, that an appeal made at the highest echelons of the Justice Department on a basis that really was not pressed at the trial level.

Judge McLAREN. Oh, that is true.

Senator BAYH. In most cases, you wouldn't succeed in that kind of—

Judge McLAREN. Well, Senator, the hardship pitch they made is simply not relevant in a trial of a section 7 case. That is what the court held in the General Motors case. Hardship is not a relevant fact. The test in these cases is the effect on competition.

Well, they came in with a hardship argument which I took into account and tried to solve by a divestiture, which did take care of the anticompetitive effects, which is the test of the Celler-Kefauver Act, and at the same time, avoiding this devastating financial impact.

Senator BAYH. In a more procedural area, in this case, did you have personal contact with all of the other ITT officials involved in the case? Was there a direct channel, was Mr. Rohatyn—

Judge McLAREN. No, the trial staff after the—

Senator BAYH. You or your staff. In other words, Mr. Rohatyn was the only one?

Judge McLAREN. Not officials. We mainly were in contact with their trial lawyers, the Kirkland firm in Chicago and the Covington firm here, and so on, and their general counsel, Mr. Aibel, and his assistant, Mr.——

Senator BAYH. Mr. Rohatyn is the only one you know of that went to the Attorney General?

Judge McLAREN. I think that Mr. Rohatyn is the only ITT official that I had any contact with except a man who is here in Washington and I think is a vice president, and he came in back in, I would say, early 1970 and urged the idea that it would save an awful lot of trouble and so on and so on if we could make a settlement and I told him anytime he wanted to send his lawyers in, we would be open for discussion, but the *sine qua non* was, as far as I was concerned at that point, divestiture of Grinnell and Hartford.

Senator BAYH. Does the Antitrust Division have a regular procedure for receiving this kind of petition relative to financial and economic impact?

In other words, if he had come to you, could you have heard that appeal?

Judge McLAREN. I think it would be at my level. I do not think that they would ever make this kind of pitch to the staff. The staff would say, well, this is not the kind of thing that we deal with, get an appointment with the head office.

Senator BAYH. This is the kind of thing that could have been normally directed to you as an Assistant Attorney General?

Judge McLAREN. Yes. Very frequently, lawyers will bring the president of the client in to talk about—well, in the first instance, not filing the case. And in the second place, if we have filed the case, to come in and work out a settlement.

Senator BAYH. What about financial hardship?

Judge McLAREN. This is sometimes argued. We have paid very little attention to it in the past. I think that it must be very, very exceptional circumstances to take that route.

Senator BAYH. What about economic impact on the country?

Judge McLAREN. Well, that is the name of the game in antitrust, the effect on competition.

Senator BAYH. Thank you.

The CHAIRMAN. Gentlemen, I would like to make a request that we rotate the questions and each member take 10 minutes, then we will rotate them back. Our Republican brethren have been here all day and they have made no progress.

Is it agreeable?

Senator TUNNEY. Mr. Chairman, I sympathize with the viewpoint you have expressed regarding our Republican brethren and it is acceptable to me.

But that, as I understand it, would mean that it would rotate back again to this side?

The CHAIRMAN. Surely.

Senator TUNNEY. Thank you.

Senator BAYH. If the Senator would yield out of my time, Mr. Chairman, I wish you had made that request a half hour ago.

The CHAIRMAN. I wish I had, too.

Senátor TUNNEY. Mr. Kleindienst, I personally am pleased that you requested these hearings today so that there could be a full hearing of this subject matter to resolve this matter.

I had a number of followup or lead-on questions that I was going to ask you which, because of the time factor, I will not ask at this time. Later on, perhaps, if the meeting continues and it rotates back to me I will ask them.

But I am deeply concerned about the memorandum by Mrs. Beard which is, after all, the subject of the hearing today. I think that it is fair to say if it were not for that memorandum, we would not be here today. So, although there are many questions that have alluded to the memorandum and many questions that have covered the points in the memorandum and you have answered them very definitively and very clearly, I would like to quote from the memorandum and ask you a question or two on the matters raised in the memorandum.

The memorandum prepared June 25, 1971 is from D. D. Beard to W. R. Merriam, entitled "Personal and Confidential." Toward the bottom of the page, the first page, it says:

I am convinced, because of several conversations with Louie re Mitchell, that our noble commitment has gone a long way toward our negotiations on the mergers eventually coming out as Hal wants them. Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering.

Now, is that statement or any part thereof true to your knowledge?

Mr. KLEINDIENST. Absolutely untrue to my knowledge. Absolutely untrue. I don't know who Louis is.

Senator TUNNEY. Perhaps Louis Nunn?

Mr. KLEINDIENST. I don't know. I don't know who he is. I don't know who Hal is. Judge McLaren, I think, characterized that, and I think he was kind when he did, but saying that it was incredible. I think it is false. Categorically false.

Senator TUNNEY. Mr. McLaren, do you care to comment on that quoted paragraph or any part thereof?

Judge McLAREN. I am completely at a loss to account for it, Senator. I know none of the people involved and as I testified before, I had absolutely no discussions with the Attorney General on this whole matter. As far as I am concerned, I was the one that negotiated this thing, it had absolutely 100 percent nothing to do with Republican Party politics or San Diego or any other lobbyist. I am completely at a loss to account for that ridiculous memorandum.

Senator TUNNEY. And finally in the last paragraph of the memorandum, it states:

I hope, dear Bill, that all of this can be reconciled—between Hal and Wilson—if all of us in this office remain totally ignorant of any commitment ITT has made to anyone. If it gets too much publicity, you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known. Please destroy this, huh?

Mr. Kleindienst, would you care to characterize that paragraph?

Mr. KLEINDIENST. I think the answer I gave you to your previous question would be applicable in toto to that, Senator Tunney.

Senator TUNNEY. Completely false?

Mr. KLEINDIENST. Yes.

Senator TUNNEY. Mr. McLaren?

Judge McLAREN. I think those are terribly serious charges and I implore the committee to bring her in here and make her say under oath what she said in there.

Senator TUNNEY. I hope the committee will and I am sure from conversations with the committee chairman that we will have her in here. So, I am sure we will have that opportunity.

The CHAIRMAN. What did you say about the committee chairman?

Senator TUNNEY. I said, Mr. Chairman, I understand that we are going to have Mrs. Beard before the committee.

The CHAIRMAN. I don't know.

Senator HART. Well, we need her.

The CHAIRMAN. Yesterday, we tried to locate her. I understood that she would call in 15 minutes. We waited over an hour and I issued a subpoena for her about 6 o'clock yesterday afternoon. That is all I can do. I can't get a gun and some bloodhounds and go out and track her.

Senator TUNNEY. I for one, as a member of the committee, Mr. Chairman, appreciate the fact that you did issue the subpoena and I would assume that eventually that subpoena will be served and that she will be before the committee.

Putting that aside for a moment, and I am thoughtful of my time—how much time do I have, Mr. Chairman?

The CHAIRMAN. Five minutes.

Senator TUNNEY. Putting aside there for a moment the question of any relationship between the convention offer and the antitrust settlement, Mr. Kleindienst, do you feel it would be a violation of Federal law for a company to make such an offer of assistance for a convention in the hope, realistic or not, that it would reflect favorably on the company with the Attorney General?

Mr. KLEINDIENST. You mean if somebody came into my office on behalf of ITT and said, if you will bring about this kind of a settlement in this case, I will cause my company to contribute \$400,000 to the city of San Diego to help finance the Republican National Convention?

Senator TUNNEY. Correct.

Mr. KLEINDIENST. I would consider that to be an illegal offer in the nature of a bribe.

Senator TUNNEY. In other words, if the company thought that the offer would help and it acted upon that belief, whether realistic or not, there would be a violation of the Federal law?

Mr. KLEINDIENST. In my opinion.

Senator TUNNEY. If you become the Attorney General—you are the Acting Attorney General now——

Mr. KLEINDIENST. Yes, sir.

Senator TUNNEY. Will you conduct an investigation of the allegations contained in this memorandum?

Mr. KLEINDIENST. You can be assured of that, Senator.

Senator TUNNEY. Well, I am very happy to hear that, because these allegations are very serious, as you have indicated.

Mr. KLEINDIENST. If that appears to be necessary as a result of these hearings. But you can rest assured of that.

Senator TUNNEY. Well, there have been reports in the press that the day after Mrs. Beard was notified by Mr. Anderson of the existence—or Mr. Hume, whomever it was—of the existence of this mem-

orandum, the leadership, the appropriate executive of ITT, ordered that documents be shredded in the Washington office of ITT.

Now, would that represent a violation of Federal law?

Mr. KLEINDIENST. I don't know. I would have to know more about it. I think you would have to say what documents and what for. I don't know. If it were done to obstruct justice, then it would, of course.

Senator TUNNEY. I would assume that the Justice Department would have some interest in making a determination whether in fact such document-shredding took place.

Mr. KLEINDIENST. Right, for that purpose.

Senator TUNNEY. I would assume that this committee would be notified of the results of such an investigation?

Mr. KLEINDIENST. If that is a false document, Senator Tunney, and there is no substance to it and it is a false piece of paper, then I do not know what violation of the law would be, except a lot of injured feelings and maligned reputations and inconveniences, I don't know.

Senator TUNNEY. Well, if it is false, it is false, and we should know about it. The trouble with this matter, as far as I am concerned, is that it affects you as it affects Judge McLaren and affects a lot of other people.

Mr. KLEINDIENST. It has certainly affected my life, Senator Tunney.

Senator TUNNEY. We are dealing with innuendo and we have to get to the heart of the matter if we can. I would hope, therefore, that we would have that information if such an investigation is conducted.

I am afraid my 5 minutes is up. I have some more questions, but I will defer.

Senator FONG. Judge McLaren, I am afraid that what has been requested by Mr. Kleindienst to clear himself in the fact that he had nothing to do with the ITT case has turned into a case against Mickey Mouse.

It seems that you have been called upon in this hearing to defend yourself in the ITT settlement. So to recap the whole testimony that has been given, let me ask you these questions.

First, you recommended a suit in the case of *Canteen*, is that right?

Judge McLAREN. Yes, sir.

Senator FONG. And that recommendation was made to Mr. Kleindienst?

Judge McLAREN. Yes, sir.

Senator FONG. And you brought suit?

Judge McLAREN. Yes, sir.

Senator FONG. Then you recommended a suit in the *Grinnell* case?

Judge McLAREN. Yes, sir.

Senator FONG. That recommendation was made to Mr. Kleindienst?

Judge McLAREN. Yes, sir.

Senator FONG. And suit was brought?

Judge McLAREN. Yes, sir.

Senator FONG. Then in the *Hartford* case, as I understand it, a suit was brought on August 1, 1969, by the Justice Department asserting that the transaction violated section 7 of the Clayton Act. Is that correct?

Judge McLAREN. That is correct, sir.

Senator FONG. And the Government's application for an injunction was denied in the U.S. District Court on October 21, 1969?

Judge McLAREN. I don't have that date, but that sounds about right. The preliminary injunction, a hearing had been held and the injunction was denied.

Senator FONG. Did you recommend that that suit be brought?

Judge McLAREN. Yes, sir.

Senator FONG. Was that recommendation made to Mr. Kleindienst?

Judge McLAREN. Yes, sir.

Senator FONG. So, in all of the three cases which deal with ITT Co.—the *Canteen* case, the *Grinnell* case, and the *Hartford* case—you recommended suit?

Judge McLAREN. Yes, sir.

Senator FONG. And in the three cases, suit was brought?

Judge McLAREN. That is correct.

Senator FONG. In the *Grinnell* case and the *Canteen* case, they dealt with divestiture?

Judge McLAREN. Yes, that is right.

Senator FONG. And you were licked?

Judge McLAREN. In the district court.

Senator FONG. You were licked in both cases in the district court?

Judge McLAREN. That is right.

Senator FONG. And your cases were thrown out. In the *Hartford* case in which you brought suit, saying that it violated section 7 of the Clayton Act, your case was dismissed?

Judge McLAREN. We did not get our preliminary injunction.

Senator FONG. You did not get your preliminary application?

Judge McLAREN. That is right.

Senator FONG. So, in the three suits dealing with ITT as it stood, at the time Mr. Rohatyn came to the office, you were out of the ball field?

Judge McLAREN. We were batting----

Senator FONG. The courts had ruled against you in all three cases?

Judge McLAREN. We were batting zero, zero, zero. That is correct.

Senator FONG. So when Mr. Rohatyn came to you and said there were tremendous financial and economic implications in this, you felt that, as a member of the Justice Department, you had to hear him?

Judge McLAREN. I felt that when they presented the arguments that this would have a very serious financial impact and it might extend to the economy. I felt that we certainly should give them a hearing and let them try to make out their case.

Senator FONG. Yes. So, outside of dealing with Mr.—that is probably not the right word. Because there has been much ado about when negotiations started, if that is very important, and I do not think it is important—when you talked to Mr. Rohatyn, was he the only person outside of the attorneys and the expert witnesses that they brought to elucidate this question of financial and economic troubles? Did you have any other conversation with anybody in the ITT office?

Judge McLAREN. No, sir; I do not recall any and I am sure I would remember if I did. I had no conversations at all during that period. Now, as I said earlier, I think of Mr. Gerrity who came to see me a year earlier.

Senator FONG. Thank you.

In the first instance, even though you were thrown out by the courts, you felt that you had to have a divestiture of Hartford from the ITT?

Judge McLAREN. All three of them ; yes, sir.

Senator FONG. And after hearing Mr. Rohatyn, you did not know whether he was correct or not in giving you these facts. Am I correct?

Judge McLAREN. That is right.

Senator FONG. So you needed expert advice to analyze what he said?

Judge McLAREN. Yes, sir.

Senator FONG. And when you asked for this expert advice, was it for the purpose of just analyzing whether Mr. Rohatyn was telling you the truth or whether it had a grain of truth or there was falsity in it, was that the purpose of that advice?

Judge McLAREN. We had Mr. MacLaury from the Treasury Department at our meeting and he heard their presentation and I expected him to make a full analysis of their presentation plus anything else, based on his own financial expertise, and give us his opinion of it.

Second, we had this outside expert, financial analyst, and we asked him to analyze the ITT material and take into account any other factors that in his experience and based on his financial expertise, to give us his impartial opinion. Yes; I asked for those two things.

Senator FONG. So the experts gave you an analysis of the situation as they saw it?

Judge McLAREN. That is correct.

Senator FONG. But they made no proposals to you?

Judge McLAREN. No, sir; they simply confirmed that in their view, if we were successful and forced the divestiture of Hartford, that it would cost the stockholders of ITT something over a billion in stock values and that it would seriously impair, as I recall, the ITT, particularly their overseas operations and ability to finance their overseas operations.

Senator FONG. So they came in with a conclusion, but with no proposals?

Judge McLAREN. No, sir; no proposals.

Senator FONG. The proposal was actually made by you?

Judge McLAREN. The proposal was devised by Mr. Hummel of our career service staff and me and some others in our department.

Senator FONG. And that proposal dealt with the divestiture of Canteen, the divestiture of Grinnell, and the divestiture of Avis, and the divestiture of Levitt?

Judge McLAREN. Yes, sir.

Senator FONG. In other words, four companies?

Judge McLAREN. Yes, sir.

Senator FONG. You were not satisfied with just the divestiture of Canteen and Grinnell?

Judge McLAREN. Well, we wanted those divested on the basis that, number one, there was a violation of law on their having acquired them.

Senator FONG. Yes; what I am saying is you were not satisfied with that, you wanted them to divest themselves of Avis and Levitt also?

Judge McLAREN. We wanted them to divest Avis and Levitt because they were going to keep Hartford, and we felt peeling away those two companies would pretty much reduce to a minimum the possible adverse competitive effects.

Senator FONG. I see; and this divestiture cost them a billion dollars in sales which represents about what, $16\frac{2}{3}$ percent of the total sales of the conglomerate?

Judge McLAREN. I think it was a \$5 or \$6 billion total sales company. I think this also came to about a billion of assets.

Senator FONG. About one-fifth or one-sixth of the assets or one-fifth or one-sixth of the sales?

Judge McLAREN. Something like that.

Senator FONG. In your opinion, that was a very harsh divestiture?

Judge McLAREN. I do not think I like the word "harsh". I think it was an effective divestiture.

Senator FONG. You thought that you had a good deal?

Judge McLAREN. I thought that we had done our job for the United States.

Senator FONG. Now, did anyone appreciate your settlement terms?

The CHAIRMAN. Gentlemen, that is a rollcall vote in the Senate. We will have to suspend for a few moments.

(Recess.)

Senator HRUSKA (presiding). At the request of the chairman, the Senator from Nebraska will start his few questions, and they are few in number. The chairman will be here directly.

There are a number of considerations that enter into this supplemental inquiry. The most important of them is to ascertain what facts there might be in this situation that would bear upon the confirmation of Richard Kleindienst to be Attorney General; whether there has been any conduct or action on his part or any facts or circumstances in this particular matter that would bear upon that question which is now before the Senate.

The other which is of less immediate import is more or less in the field of long-range procedures. What legislation and what court procedures do we need that we do not have at the present time in order to better handle antitrust litigation of the kind with which Judge McLaren and with which the Deputy Attorney General were faced back in 1971? In due time—I join the expressed hope of Senator Hart and that of Mr. Kleindienst—that in due time, we can get at that long range proposition. But right now, it would appear that our present endeavor should be to try to cast some light or derive some light, if any can be derived, on the immediate circumstances of this case as it affects the nomination.

I would like to get back, Judge McLaren, to the settlement that was made. After all, there were two phases to that settlement that the evidence seems to point out. First, when Mr. Rohatyn came in and posed the question and made the presentation that he did initially to Mr. Kleindienst, there was a policy question to be determined: Would there be the disposition on the part of the Department of Justice to enter into the type of consent decree which would mean that there would not be a divestiture between the fire insurance company and the I.T. & T. Second, if that question was answered in the affirmative, that policy would then have been determined and the negotiations would begin to get the substance of the decree agreed upon. Which brings us to the question which has been asked here: When did the negotiations transpire? When did they commence?

Mr. McLaren, I have in my hand a copy of the decree, the consent decree. It is 15 typewritten pages on legal-sized paper. It took quite a while to pound that out, did it not?

Judge McLAREN. Yes, sir. I think that is only one of the three, is it not?

Senator HRUSKA. This is the one in the *ITT-Hartford* case, that is right.

Judge McLAREN. But there were three cases.

Senator HRUSKA. If there were three decrees, then we would have to have three bundles of paper like that which I have here.

Judge McLAREN. That is right.

Senator HRUSKA. How many conferences would there have been by way of negotiation with the respective legal staffs of the Department of Justice, Treasury, the lawyers representing the ITT and these other corporations?

How many conferences do you think that would have been?

Judge McLAREN. Well, just as a guess, Senator, there probably were 20 or so. But I think the lawyers think of negotiations as the kind of thing that started after I made our proposal to Mr. Rohatyn and he came back and said—and his lawyer asked for an appointment and discussed the broad basics of our proposal, and I told him that that was the pattern that we were going to stick with, but we would negotiate as to all the details of the thing. And from there on, starting about the—I would guess around the 24th of June—he called me, I think, on the 18th and we made an appointment for the 24th. It is in my prepared statement. And from there on, that was really the first negotiating session on the 24th, when he came in and wanted to know how broad the negotiating limits were here. I kind of laid out the ball park.

At the end of the month, I brought him together with the two trial men and they met almost daily, then, until the latter part of July, hammering out all these details. And there were three decrees.

Senator HRUSKA. Now, then, my question is at how many of those negotiating sessions was Mr. Kleindienst present?

Judge McLAREN. He was at none of those sessions. I say again, Senator, I think that I was responsible for the basic proposal of this thing, I was responsible personally and with my assistants in the Antitrust Division for all of the negotiations. I do not think any lawyer who knows anything about negotiating would say that Kleindienst had anything to do with it.

Senator HRUSKA. Then Mr. Rohatyn was notified and he presumably took it up with his principals and that was on July 30 and the announcement was made on the 31st, which was a Saturday?

Judge McLAREN. No, we did not have any contact with Rohatyn then. My dealings at that time were entirely with Mr. Sailer, the trial counsel. Friday was the 30th. We broke up and he was to contact the clients and clear certain things that we had proposed. Then he came back on Saturday morning and we ironed out some more things. Then on Saturday afternoon, Sailer went back by telephone to the ITT people and he got their approval. When he came back, he said, we have got a deal, and I put out a press release. It was my deal.

Senator HRUSKA. In the negotiating sessions, Mr. Kleindienst was not present?

Judge McLAREN. Never.

Senator HRUSKA. Now, then, as to the decree itself. First of all, you had on your hands two lawsuits that had been lost at the trial level and you had a third case pending against ITT that was scheduled for trial along about in September.

Judge McLAREN. In Hartford, yes, sir.

Senator HRUSKA. And you had ahead of you a long, long route before you got to final judgment because probably each of those three matters would have to go to the Supreme Court under the present Expediting Act?

Judge McLAREN. That is right, sir.

Senator HRUSKA. Now, as against that, you were able to negotiate and effectuate a consent decree which reached into the final settlement of the two cases that had been decided adversely against you. You got the divestiture of two corporations, additional corporations—Avis and the Levitt Co.—both in the insurance business—that is, in need of insurance services—and therefore furnishing the basis for that pernicious reciprocal relationship which you also were aiming at and seeking to eliminate?

Is that not so?

Judge McLAREN. That is right.

Senator HRUSKA. In addition to that, you stopped in its tracks the further growth of the ITT Corp. by saying there would be no acquisitions for 10 years of any corporations over a hundred million dollars.

Judge McLAREN. Yes, sir; qualifiedly. We did not completely put the quietus on that. We left them with the right to make acquisitions that would not have an adverse impact on competition. That was our general policy with everything.

Senator HRUSKA. Yes. So that had you proceeded in the regular course of the litigation to its ultimate course, there would have been very little difference between what was actually obtained and that which you could have ideally obtained except that it was done expeditiously, there was a tone of finality in a very short order of time, and you got what I would consider—having been on the Antitrust Subcommittee for some 14 years now—a very advantageous and progressive step toward executing the antitrust policy of the Nation as it existed under your tenure as division head.

Judge McLAREN. I think that is right, Senator, and I appreciate your saying so.

Senator HRUSKA. The only difference between your approach to this type of merger and the approach of some of your predecessors was that you felt that a restraining policy could be advanced on a litigation basis and they folded their arms up and said, no, we cannot do it, we want the Congress to give us additional legislative statutory power.

Judge McLAREN. That is right, sir.

Senator HRUSKA. And you went ahead, and in my judgment, obtained an excellent settlement and excellent progress in that direction.

Now, I would like to ask you, Mr. Kleindienst a few questions—after all, we are here at your request today to consider your nomination. It is my understanding that you have said under oath—I was gone earlier off and on for 3 or 4 minutes at a time—but it is my under-

standing that you said under oath that everything in the alleged memorandum of Mrs. Beard is false. Is that correct?

Mr. KLEINDIENST. To the extent—yes, sir; in my opinion, that is a false memorandum.

Senator HRUSKA. You also testified that you were not aware of any independent discussion concerning financing for the San Diego convention and such arrangements, if there be any, had no effect whatsoever nor any consideration whatsoever on any actions of the Department in connection with the ITT cases? Is that correct?

Mr. KLEINDIENST. Senator Hruska, subject to the penalty of perjury, I never heard of the San Diego ITT Republican Convention matter until the latter part of November or some time in the first part of December. I heard about that in the press.

Senator HRUSKA. You have also testified that if any such approach were made or any proposal of that kind would be made—linking the antitrust litigation to the money—it would in your judgment be a violation of the law and that you would take appropriate criminal action if that were the case.

Mr. KLEINDIENST. Yes, sir.

Senator HRUSKA. Is that correct?

Mr. KLEINDIENST. Yes, sir.

Senator HRUSKA. It is that simple, isn't it?

Mr. KLEINDIENST. Yes, sir.

Senator HRUSKA. There may be other witnesses. There undoubtedly will be. It will be with interest that I will listen to their testimony. But it should be testimony, it should not be hearsay. It should not be the report of one man on some statement by a third man about what four or five other people may or may not have said.

I feel quite happy about the forthright fashion in which the testimony has come in here. Undoubtedly, again, there may be some more. But in the meantime, the burden lies on those who are attempting to gather inferences from this very clear record.

If I have any time left out of my 10 minutes. I yield it so as to permit one of my colleagues to proceed.

Senator MATHIAS. The Senator from Kentucky has very kindly yielded. I have just a very few questions.

Judge McLAREN, title 28, section 519, of the code specifies in effect that the Attorney General shall personally supervise litigation in the Antitrust Division. This is a matter which, unlike a great deal of the other routine work of the Justice Department, can be handled entirely by delegation to subordinates, is that correct?

Judge McLAREN. Yes, sir.

Senator MATHIAS. Now, this whole question of ITT arose very early in the period of time in which you were in office. The testimony is that because of prior professional relationships, the Attorney General disqualified himself from any participation here.

Now, when and in what manner did the Attorney General convey his personal disqualification to you? How did you know that he had taken himself out of it?

Judge McLAREN. I believe, Senator—I am reaching back, but I think I first learned it when within a week or 2 weeks after inauguration, and after we all took office, the Attorney General sent around a list of former clients of his or his firm's and stated that he would dis-

qualify himself from handling such matters. I believe that ITT Continental Banking Division or something like that——

Senator MATHIAS. In other words, there was a general list of matters in which he felt that professional relationships of the past would prevent his official activities in the future?

Judge McLAREN. Yes, sir.

Senator MATHIAS. Or limit his official activities in the future?

Judge McLAREN. Yes.

Senator MATHIAS. And this was one of those matters on the list?

Judge McLAREN. Yes, sir—well, not a matter, a client.

Senator MATHIAS. Well, one of the areas or individuals he had ruled off limits for himself?

Judge McLAREN. Yes, sir.

Senator MATHIAS. And that left the Deputy Attorney General with the statutory responsibility to discharge in the area of cases on this list, the clients or individuals on this list?

Judge McLAREN. Yes, sir.

Senator MATHIAS. I would like to shift to Mr. Rohatyn, if I may.

There has been discussed here at some length the fact that ITT prevailed in the initial litigation in this antitrust matter, and it has been further testified by you and by others that you felt, and presumably your associates in ITT felt, that the settlement which was proposed by Mr. McLaren on behalf of the Justice Department was a punitive settlement, one for which I think you used the word "harsh" on several occasions.

Now, since you had prevailed in the original litigation and since the settlement was as harsh as you described it, why in the long run did ITT accept it?

Mr. ROHATYN. Senator, I can only answer as one director, but I think it was a case of making a very difficult business decision and weighing the risk of going up in all three cases to the Supreme Court and maybe losing and then having a total financial disaster as opposed to agreeing to the terms negotiated by Mr. McLaren and his staff and having painful surgery, but something that in the long run, the company can live with. I think it was really a case of weighing the totally unacceptable risk of losing all three cases if they went up as opposed to settling for this.

Senator MATHIAS. Had counsel advised the board of directors that there was such a likelihood?

Mr. ROHATYN. Senator, again, I keep saying I am no lawyer, but I have become a lay student of antitrust law and I have never found a lawyer who has told me that there is no risk.

Senator MATHIAS. There would not be as many prosperous lawyers around if there were not as many risks as there are.

Now, Mr. McLaren, as you approached the Hartford merger, did you ever contemplate an injunction to prevent that prior to the merger itself?

Judge McLAREN. Yes, sir, we filed and obtained a temporary restraining order. That was in effect for maybe a couple of weeks. Then we went, in effect, to trial on our motion for preliminary injunction, and I think that trial probably lasted 2 or 3 weeks, at the end of which the court denied our preliminary injunction motion and ordered—permitted ITT to go ahead with the acquisition, consummate it, di-

recting them to hold the property separate so that if we won the case, they would be able to divest the property.

Senator MATHIAS. So in fact, you had done all that you could do to prevent that third and most damaging merger of the three, is that true?

Judge McLAREN. That is correct, sir.

Senator MATHIAS. Had you done that with the approval of the Deputy Attorney General?

Judge McLAREN. Yes, sir. We all moved in *Grinnell* at the same time and tried to get a preliminary injunction there. We were unsuccessful.

Senator MATHIAS. You were unsuccessful in that one also?

Judge McLAREN. Unsuccessful; yes, sir.

Senator MATHIAS. Let me ask Mr. Rohatyn one more brief question. It is a repetition, because you have already said at an earlier point during the day that you did not have personal knowledge, but there have been several recesses since then. Let me ask you again because you may know now.

As a director of ITT, do you know whether ITT-Sheraton made any commitment to either the city of San Diego or to the Republican National Committee with respect to holding—with respect to financially underwriting the Republican National Convention?

Mr. ROHATYN. Senator, as I said before, I know what I read in the newspapers in December on when this matter came up.

Senator MATHIAS. Well, I am going to ask you some questions, because as the Senator from Nebraska has said, there is a lot of hearsay here, a lot of rumors floating around, and I do not think we want to make decisions here on the basis of rumors or reports. I think we have to have some facts. And you are the only fellow around here right now that we can reach out for and get the facts from, because I think they are within your reach as a director of ITT, which is the parent company of ITT-Sheraton.

I would like you to tell us, provide for us the information as to whether or not ITT-Sheraton did in fact make a financial commitment.

Senator HRUSKA. Would the Senator yield?

Senator MATHIAS. Yes.

Senator HRUSKA. There will be another witness who will be in possession of some facts on that matter. You can pursue it if you wish.

Senator MATHIAS. Well, let me pose my question to Mr. Rohatyn. Perhaps we can get at it with him.

Second, I would like to know what the commitment was if there was one.

Third, I would like to know this: is it a custom of the trade for businesses—hotels and other businesses—in towns that frequently try to attract conventions, do the businessmen of those communities sometimes, as a matter of trade custom, make commitments to underwrite conventions which they are inviting to their communities and whether or not ITT-Sheraton, if you can find out, made similar commitments for Miami in 1972 and either Miami or Chicago in 1968?

Mr. ROHATYN. Senator, I can only answer one piece of that question because I asked that question of the chief executive officer of ITT to satisfy myself with respect to whether this is normal business practice for a hotel company. It was answered in the affirmative.

As to the other questions you posed, I believe that an officer of the company should answer those questions who would have the facts at his fingertips. I do not have those facts, Senator. If nobody else from the company testifies, I will get those facts for you.

Senator MATHIAS. I am willing to leave it at that. I am looking to you to see that we get the information, either directly from an officer of the Sheraton Corp. or if not from them, somebody who can. And I would like it to be someone who can testify as to the custom of the trade so that we understand exactly what we are talking about when we talk about a commitment.

Senator HRUSKA. A vote is in progress. We will stand in brief recess until the Senators have voted and return.

(Recess)

The CHAIRMAN. We will recess the hearing until 10:30 tomorrow morning.

(Whereupon, at 5:15 p.m., the hearing was recessed, to reconvene at 10:30 a.m. on Friday, March 3, 1972.)

RICHARD G. KLEINDIENST

FRIDAY, MARCH 3, 1972

U.S. Senate,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Mathias, and Gurney.

Also present: Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

TESTIMONY OF RICHARD G. KLEINDIENST; ACCOMPANIED BY RICHARD W. McLAREN, FELIX G. ROHATYN, AND WALKER B. COMEGYS—Resumed

The CHAIRMAN. Any further questions?

Senator SCOTT. All I have, Mr. Kleindienst, is an observation. I feel that you have given a candid and adequate rebuttal and I hope that the hearings will be confined within the parameters or the framework of the confirmation, rather than develop into a broad fishing expedition on the entire functions of the office of the Justice Department. I would like to see those questions explored at some later hearing, and if there are questions other than those bearing immediately on your confirmation, I would hope that the committee would take them up at another time and go into them as thoroughly as the situation would dictate. But so far as the confirmation is concerned, I think the statements you have made are complete, candid, and supported by testimony of other witnesses, and ought to be a complete answer to the charges and to the reason for this hearing.

Thank you.

Mr. KLEINDIENST. Thank you, Senator Scott.

Senator ERVIN (presiding). Senator Gurney.

Senator GURNEY. Well, thank you, Mr. Chairman.

One of the problems of being the end man on the committee is that all of the questions have been asked and the points have been explored before your time has arrived.

I think I would simply like to echo what the minority leader or the opposing leader, Senator Scott, has already said.

I sat through most of the testimony yesterday, not all of it, but certainly about nine-tenths of it, and I think that the whole matter was fully explored. As a matter of fact, it was not only explored, but reexplored again and again, and some points were covered many times.

I am satisfied in my mind that there certainly was no case here of a deal with I.T. & T. in return for any contribution to the Republican meeting in San Diego this coming summer. Moreover, it seems to me that Mr. McLaren, or Judge McLaren, who handled the details of the settlement, performed a rather unique and fine service here and ought to be commended for handling a very difficult situation.

It seems to me that he accomplished about what the Department set out to do, and that was to stop the conglomerate I.T. & T. from further acquisitions. Also, a divestiture, and while it did not involve the Hartford Insurance Co., it involved, as far as the value of the sale, approximately the same amount, about \$1 billion, so the end result is pretty much what the Justice Department set out to do in the first place; and in so doing, it seems to me that they not only performed a service for the Government as far as the antitrust part of it is concerned, but also saved a whole lot of innocent stockholders in I.T. & T. from great loss which the testimony shows would have been somewhere around \$1 billion, and perhaps more; and also saved the company, itself, perhaps, very serious financial problems.

I do not think that the Government's end there was to show favoritism to I.T. & T., but to protect the financial community as a whole, and in so doing I think he ought to be commended.

I am glad we had the hearings so we could find out exactly what happened, and I, for one, as I say, can express nothing but praise for the way the Justice Department, particularly Judge McLaren, and Mr. Kleindienst in his supervisory capacity, handled this situation.

One other point that I might make, Mr. Chairman, is I asked a member of the Justice Department to do a rundown for me of figures of antitrust cases during this administration, because some of the questioning that came yesterday certainly indicated that perhaps the prosecution of antitrust cases of this administration was perhaps less than enthusiastic. I got a rundown of the amount of activity down in the antitrust field which is here. I will not take the time to go over it with the committee. I would like to submit it as a part of the record, if I may, and I would like to make the general observation that it shows that there has been more, there has been more antitrust activity, more cases filed and investigations done in the 3 years of this administration than was done in the 4 years of the previous administration, and a very appreciable increase.

So, I think the Antitrust Division of the Nixon administration has done a fine job. And, as I say, I am thoroughly satisfied with the testimony we have had thus far, and I would like to submit this as a part of the record.

Senator ERVIN. That will be accepted and printed in the record at this point.

(The material referred to follows:)

COMPARATIVE SUMMARY OF WORKLOAD STATISTICS BY FISCAL YEARS—ANTITRUST DIVISION

	1965	1966	1967	1968	1969	1970	1971
Antitrust cases:							
Filed.....	43	44	53	50	53	59	64
Appealed.....	8	10	5	4	5	5	7
Terminated.....	52	55	61	78	47	60	¹ (57) 54
Pending.....	144	133	125	97	103	102	112
Investigations:							
Pending beginning of year.....	508	567	590	644	692	710	678
Instituted.....	486	449	444	445	555	516	562
Terminated.....	427	426	390	398	537	548	482
Pending end of year.....	557	590	644	692	710	678	758
Administrative law cases:							
Instituted.....	114	236	208	342	195	208	192
Terminated.....	107	183	236	378	201	231	185
Pending.....	185	238	220	184	178	155	162
Agency proceedings.....	285	248	277	242	371	409	² 515

¹ Figures in parentheses includes cases where decree signed by 1 or more but not all defendants and cases settled but not terminated due to 30-day waiting period.

² Agency proceedings include intervention in merger proceedings, surplus property clearance, statutory advice to financial regulatory agencies in merger cases, reports to defense agencies, alien property matters, FTC civil penalty cases, reports to CAB, and appearance in other agency proceedings.

COMPARATIVE ANALYSIS OF ANTITRUST CASES FILED BY FISCAL YEARS

	1965	1966	1967	1968	1969	1970	1971
Cases filed:							
Civil.....	33	32	36	40	39	54	52
Criminal.....	10	12	17	10	14	5	12
Total.....	43	44	53	50	53	59	64
Cases filed involving price fixing:							
Civil.....	13	14	26	9	10	15	14
Criminal.....	7	12	16	10	13	4	9
Total.....	20	26	42	19	23	19	23
Merger cases filed.....	17	14	7	20	26	15	24
Bank merger cases.....	1	4	1	7	12	5	8
Monopolization cases filed:							
Civil.....	6	5	6	3	3	11	15
Criminal.....	1	0	0	1	2	0	2
Total.....	7	5	6	4	5	11	17
Indiv duals indicted.....	41	43	70	48	28	14	34

WORKLOAD STATEMENT—ANTITRUST DIVISION

Antitrust cases	Fiscal years						
	1965	1966	1967	1968	1969	1970	1971
District courts:							
Civil:							
Pending, first of year.....	115	118	115	99	75	83	88
Filed.....	33	32	36	40	39	54	52
Terminated.....	30	35	52	64	31	49	44
Won.....	28	25	47	59	30	43	42
Lost.....	1	3	0	3	1	4	1
Dismissed on Government's motion.....	1	7	5	2	0	2	1
Pending end of year.....	118	115	99	75	83	88	96
Criminal:							
Pending first of year.....	38	26	18	26	22	20	14
Filed.....	10	12	17	10	14	5	12
Terminated.....	22	20	9	14	16	11	10
Won.....	13	17	9	13	16	10	9
Lost.....	7	1	0	1	0	0	1
Dismissed on Government's motion.....	2	2	0	0	0	1	0
Pending end of year.....	26	18	26	22	20	14	16
Court of appeals:							
Pending first of year.....	1	1	2	1	1	2	4
Filed.....	4	3	1	1	4	3	4
Terminated.....	4	2	2	1	3	1	3
Won.....	2	2	2	1	0	1	3
Lost.....	2	0	0	0	1	0	3
Dismissed.....	0	0	0	0	1	0	0
Pending end of year.....	1	2	1	1	2	4	2
Supreme Court:							
Pending first of year.....	2	3	5	4	2	0	1
Filed.....	4	7	4	3	1	2	4
Terminated.....	3	4	6	5	3	1	1
Won.....	3	2	5	4	3	0	1
Lost.....	0	2	1	1	0	0	0
Pending end of year.....	3	6	4	2	0	1	4

Senator GURNEY. Thank you.

Senator ERVIN. Senator Burdick, I believe everyone had asked questions yesterday except you.

Senator BURDICK. I think all of the matters have been explored quite thoroughly and I have no questions at this time.

Senator ERVIN. I just have a curiosity: How much of the business, if any, of the International Telephone & Telegraph Co. has anything to do with telephones and telegraphs?

Judge, I imagine that you can answer that question.

Mr. McLAREN. I am afraid that I cannot give you much of an impression on that, Senator. I think that basically the telephone-telegraph part of ITT's business, such as it still has, is outside the United States. And I am not sure at all about that, but my impression is that its properties within the United States are nontelephone and telegraph properties, although they are in manufacturing enterprises that are related to the electronics field.

Mr. ROHATYN. Senator, maybe I can try to just give you an approximation. I do not have the figures in my mind, but the telephone operations of I.T. & T. are essentially foreign, and the bulk of it is in Europe. I would guess that somewhat over \$1 billion of the company's business is in telecommunications equipment manufacturing and, of course, we have just lost the Chilean Telephone Co., which was expropriated last year, and the Peruvian Co., which was expropriated.

Senator ERVIN. I would just like to ask this question of Judge McLaren for my own information. The inference I have drawn from my little knowledge of the antitrust suits and antitrust policies has led me to the conclusion that the primary object of the enforcement of the antitrust laws has been remedial in nature rather than punitive. In other words, the inference I drew over the years is that while there have been some proceedings that have been punitive in nature, in the great majority of the attacks they have been made upon acquisitions of other companies and mergers and have been to require such divestiture and such future actions as would remove the stifling of competition and destroy what has been done toward the creation of monopolies.

Mr. McLAREN. That is certainly my thinking, too, Senator. The basic thrust is to protect competition, which is the regulator in the economy, because if we do not protect it through antitrust and to the extent that competition fails, we have got to have more Government regulation, which we are not in favor of.

And I think that the criminal part of the law is important in that it provides the deterrent from the more overt kinds of violations of the law, but mainly our activity, as you say, have been on the civil side, where we would try and prevent through injunction—and undo—various kinds of anticompetitive situations, whether they are practices or whether they involve structure.

Senator ERVIN. Being a somewhat weak mortal who constantly succumbs to temptations, I cannot resist the temptation to observe that my good friend, the distinguished Senator from Pennsylvania, is invoking Lidford law in reverse:

I oft have heard of Lidford law,
How in the morn they hang and draw,
And sit in judgment after.

Now the distinguished gentleman from Pennsylvania has asked me to reverse that, that we sit in judgment first and then hear the evidence after, and it seems to me that that would be very inappropriate: because I think I have been very much impressed by the candidness of Mr. Kleindienst, but I think it would be unfortunate to him if we sat in judgment first and then heard the evidence thereafter.

Senator SCOTT. If the distinguished Senator from North Carolina will yield, I do not make the same pretention toward expertise on constitutional law, but having tried some 10,000 cases in my time I have learned that unfortunately at times the court is deaf, and I am afraid that deafness has stricken the Senator from North Carolina. I did not argue that we should make a judgment first and hear evidence later.

I specifically said that we should act on the evidence pertaining to the confirmation, that we should continue our examination on those points, but with more restricted limits, and not have a more general type fishing expedition, up a dry creek, I might add, which would serve no purpose, and if we are going into the philosophy of the Department of Justice under all Attorneys General, that we ought to reserve time for those who are interested in this committee to conduct that hearing, that philosophical exploration at a later date. I see nothing wrong with suggesting that when witnesses appear they be asked to testify on the matters pertaining to the subject matter to which they were asked to address themselves; namely, the confirmation of the Attorney General designate.

Senator ERVIN. Well, justice is supposed to be blind, but it is not supposed to be deaf to testimony, and the Senator from North Carolina, for one, is not willing to reach a conclusion that the creek is dry unless the Senator from North Carolina first goes and takes a look at the creek and, if there is any water there, takes a wade in it a little bit.

Senator SCOTT. All I can say is the Senator has a very long pole.

Senator ERVIN. My experience has been that it takes a long pole to reach some things. [Laughter.]

Senator SCOTT. That is entirely too dangerous to pursue further. [Laughter.]

Senator ERVIN. Yes, because we may get drowned in the dry creek. Did you have any questions?

Senator KENNEDY. Yes.

Mr. Kleindienst, I think in the course of yesterday's exchanges, both with myself, and I think later with Senator Tunney, and I think later perhaps with Senator Mathias, the question was raised about when you had some awareness as to the arrangements that were made between I.T. & T. and the Republican Party. I think you responded that you became aware of this sometime in late November or early December through the newspapers. Would you restate in your own words—

Mr. KLEINDIENST. Senator, I do not recall the date, but the time I did was when the subject matter first came to the public attention.

Prior to that time, and whenever that time was, I had no knowledge of it.

Senator KENNEDY. Well, do you remember what time, approximately, that was? I think you gave some approximate times yesterday.

Mr. KLEINDIENST. Senator, my recollection is that either the first time, or a very specific aspect of it came to my attention in San Diego on or about December 3, when I was attending a regional meeting of the U.S. attorneys. Now, whether that was the first time it came as a matter of public notice, I do not know, but I know that the subject matter came to my attention at that time.

Senator KENNEDY. Judge McLaren, when did you hear about this? When did you hear about it?

Mr. McLAREN. Well, whenever it broke in the newspapers, Senator, and I am just not sure when it was. I gather it was in early December and I think, if that is right—well, I was in Europe for about 15 days in the early part of, or middle of, December.

Senator KENNEDY. I am sure that you do not recall all of the mail that you receive, but there was a letter that was sent to you on September 21 from Reuben Robertson. Are you familiar with Reuben Robertson?

Mr. KLEINDIENST. No, sir. No, sir.

Senator KENNEDY. Well, he wrote—do you know, Mr. McLaren?

Mr. McLAREN. I recognize the name, I think, as a man who has been on the Consumer Aeronautical Board, or something like that.

Senator KENNEDY. Yes. But, you are generally familiar with him? You know of him? You know the name?

Mr. McLAREN. No, I do not think I have ever met him.

Senator KENNEDY. Well, he wrote on September 21 to Mr. Kleindienst, and in a rather lengthy letter, two-page letter, in the last paragraph he inquires of you, he makes these requests:

Specifically, we believe you should disclose (a) who made the basic decision for the Justice Department to permit settlement without divestiture of Hartford (b) what contacts during the period of negotiation did you have with Rep. Robert Wilson, and (c) what is the relationship between this settlement and ITT's reported financial support to the City of San Diego in connection with the site of the Republican Convention in 1972?

In light of the Government's substantial surrender in permitting ITT to keep Hartford, it is not surprising that questions would occur as to how it came about. That was the letter of September 21 to Mr. Kleindienst, and on September 22 Mr. McLaren responded to Mr. Robertson in a letter, the second paragraph of which says:

With regard to the specific questions contained in the last paragraph of your letter, please be advised that (a) the Antitrust Division developed the terms of settlement of the ITT cases and they were approved by the Deputy Attorney General on my recommendation; (b) I am advised that the Deputy Attorney General had no contacts with Congressman Bob Wilson during the period of negotiation, and I had no such contacts; (c) there is no relationship whatsoever between the settlement of the ITT-Hartford litigation and any financial support which ITT may have offered to the City of San Diego.

Mr. Kleindienst, how do you think that Mr. McLaren could have given those kinds of assurances if he had not talked to you about it?

Mr. KLEINDIENST. Well, I would say, Senator Kennedy, he would have talked to me if he was going to give assurances on my part. I have no recollection of the letter or of a specific conversation with Judge McLaren. That kind of letter is kind of routinely, by my staff, sent down to the various divisions of the department if it raises specific matters pertaining to let us say antitrust, or criminal law, or civil rights.

But, that letter, on the face of it, would indicate that the Antitrust Division or Mr. McLaren would have called me about it. I do not recall the conversation.

Senator KENNEDY. It does not appear to be too routine, though. I suppose the charge is raised in it by someone.

Mr. KLEINDIENST. Well, you ought to see the mail I get, Senator Kennedy. You know?

Senator KENNEDY. What can you tell us, Mr. McLaren? Do you remember any conversation that you had with Mr. Kleindienst about it, or how do you feel that you could have given those assurances?

Mr. McLAREN. I do not remember it, but from the context of the letter I must have asked him about the Wilson part of the thing. I would not have written that without having checked with him, I am sure. But—

Senator KENNEDY. What could you tell us about:

(b) I am advised that the Deputy Attorney General had no contacts with Congressman Bob Wilson during the period of negotiation?

Mr. McLAREN. That is what I am talking about. I would not have written that unless I had checked with Mr. Kleindienst and asked him.

Mr. KLEINDIENST. If he had asked me that question, I would have said I had no contacts.

Senator KENNEDY. Well, do you remember him having the conversation with you?

Mr. KLEINDIENST. Judge McLaren?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. No, sir; I do not, but I am not saying he did not. That letter would indicate that he did, but I do not recollect it.

Senator KENNEDY. Then Congressman Wilson did not have any contact with you?

Mr. KLEINDIENST. At no time.

Senator KENNEDY. And what about the—would you have talked, Mr. McLaren, to Mr. Kleindienst about the Antitrust Division's having developed the terms of the settlement for I.T. & T.'s cases, and that they were approved by the Deputy Attorney General? You would have been able to write that without a conversation, would you?

Mr. McLAREN. I am sure I would have been able to write that on my own, because that is the way it happened.

Senator KENNEDY. With regard to (c), that there is no relationship between the settlement and any financial support which I.T. & T. may have offered the city of San Diego, could you tell me on that would you have made that decision without—

Mr. McLAREN. Well, since I made the decision to settle, and I negotiated it, and I had no knowledge whatsoever of the San Diego meeting, I could make that statement, and I did make that statement just out of my own knowledge and conviction.

Senator KENNEDY. Well, I guess our time is up.

The CHAIRMAN. Quentin?

Senator BURDICK. No, I have none.

Senator BAYH. I yield my time to you.

Senator KENNEDY. All right.

The CHAIRMAN. We will come back to you.

John?

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Kleindienst, yesterday I was pursuing a question with you and I did not have time to complete it. I was asking you about the possibility of criminality in a company offering support of a convention for the purposes of influencing an antitrust suit.

Now, let us just assume if I.T. & T. made its offer of support for the convention, solely to San Diego city officials, without any approach to the Justice Department, but it did so in the hope, and with the purpose, whether realistic or not, that it would put I.T. & T. in a better light in its negotiations with Justice. Under that set of assumptions, would there be a violation of Federal law?

Mr. KLEINDIENST. I do not believe so. If the money was going to go to the city of San Diego to help to finance the Republican National Convention, and there was no other approach with anybody else in the Government, and they just said to themselves, "Well, if we do this, boys, this might improve our posture with the Government." On those set of facts I would not think there was a violation of the law.

Senator TUNNEY. Well, taking it one step further, if ITT went beyond that contact and mentioned its offer to a Federal official, with the purpose of buttering up the Republicans in the hope and with the purpose of improving the climate for their negotiations of the antitrust suit, would there be a violation of Federal law then?

Mr. KLEINDIENST. If they just mentioned that incidentally, we have given some money to the city of San Diego to help the Republican National Convention, I would not say that would be illegal conduct.

Senator TUNNEY. Well, let us assume now that they made the offer and then they communicated that offer to a high official in the Justice Department, with the purposes of having that offer made known in the Justice Department for the purposes of working out a more favorable settlement; would that be a violation?

Mr. KLEINDIENST. If they communicated the information, and they had a purpose in the back of their minds, on that set of facts I would not think there was any improper or criminal conduct on their part.

Senator TUNNEY. Even if they did that with the purpose of influencing the settlement, you do not think that that would be a violation?

Mr. KLEINDIENST. No, sir.

Senator TUNNEY. At what point would it become a violation of criminal law?

Mr. KLEINDIENST. Well, I think you get down to criminal conduct if somebody comes in your office and says, we would like to get this case settled up, and if you will help us get it settled up, we will contribute \$400,000 to the Republican Party. In other word, if you will do such and such, we will do such and such.

I think that that is where you now are in the area of criminal conduct.

Senator TUNNEY. Well, in 18 U.S.C. 611, entitled "Contributions by Firms or Individuals Contracting With the United States," it reads:

Whoever entering into any contract with the United States, or any department or agency thereof, either for the rendition of personal services or the furnishing of any materials, supplies, or equipment to the United States, or the department, or an agency thereof, or selling any land or building of the United

States, or any department or agency thereof, in payment for the performance of such contract, in payment for such materials, supplies, equipment, land, or buildings is to be made in whole or in part from the funds appropriated by the Congress during the period of negotiations for or the performance under such contract for furnishing materials, supplies, equipment, land, or buildings, directly or indirectly makes any contribution of money or any other thing of value, or promises expressly or impliedly to make any such contribution to any political party, committee, or candidate for a public office, or to any person for any political purposes or use, shall be fined not more than \$5,000 and imprisoned not more than 5 years, or both.

Mr. KLEINDIENST. I think that that statute applies to the procurement statute where we are contracting with the Government and selling them services.

Senator TUNNEY. It would not apply—

Mr. KLEINDIENST. I do not think that that statute would apply to a situation where this corporation or its hotel subsidiary said, we will give to San Diego some money to help to finance the financial obligations for the Republican Party to have its convention there, and then let us say they have an antitrust suit they are trying to settle up.

Senator TUNNEY. When the settlement is made, is that not a contract? Hasn't he made a contract with the Government when we are reaching settlement on an antitrust suit?

Mr. KLEINDIENST. It is an agreement which I guess is a form of a contract. I do not—on the facts that we are assuming, Senator Tunney, I do not think that that would be applicable to this kind of case.

Senator TUNNEY. I would be in agreement with my colleagues who have said that you have been most candid in your remarks and your denials of any involvement with the ITT officials who were making contributions to the Republican Party for the purposes of the national convention in San Diego.

But, the one problem I think that bothers many people is the fact that when an antitrust suit is being negotiated, that there could be private meetings between high officials in the Justice Department with representatives of the firm that is negotiating settlement. Do you think that it would be helpful and protective of high officials in the Justice Department, such as yourself, if the Congress passed a law that all officials of the Justice Department, when they were negotiating this settlement in an antitrust suit, would list with the district court, ex parte, the informal meetings that were had and the persons who attended those meetings, so that it could not appear in the future that these meetings were held secretly, and secret deals were worked out?

Mr. KLEINDIENST. Well, Senator Tunney, a lot has been said by Mr. Anderson in his column about private, secret meetings. To begin with, there was nothing private or secret about my meetings with Mr. Rohatyn other than the fact that he and I were in my office alone together.

Well, these meetings were scheduled on my appointment book, they were on my secretary's appointment book. Mr. Rohatyn came down, in the gate, at 10th and Constitution, had to identify himself to the security guard, was announced to come up. My doors were not closed, you know, and Mr. Wood, my Deputy's office was next door. I left my door open. I think that you have to get to the point, if you are going to operate the Government, the executive branch of the Government, where, indeed, let us say the Congress, where you have to have trust in public officials, that No. 1, they have to be available to

the public, whether it is corporations, whether it is antitrust cases or criminal cases.

My appointment calendar is full day in and day out from 8 o'clock in the morning until 6 or 6:30 at night. I see all kinds of people. I see corporate executives, I see lawyers. I see Congressmen, I see Senators. I see all kinds of people who feel that they have a legitimate right to talk to an official of the Justice Department, with respect to matters that affect their lives.

If a public official had to send to some court, it seems to me, a list of every such meeting—I have no objection, myself—I think it would be burdensome.

Senator TUNNEY. I am thinking in terms of the settlement of anti-trust suits, when you meet with executives of the corporation, whether or not it would be helpful to have those meetings listed with the court so that that would be known?

Mr. KLEINDIENST. If you were going to act improperly, Senator Tunney, then you would not submit to the court all of the meetings that you were going to have. You know, if you are going to have secret meetings to do something improper, then you would not submit that information to the court.

If you are an honest public official, it seems to me that you should not be required to do that. It would not bother me one bit to submit to a court the meetings that I had with anybody with respect to any anti-trust measure, but I do not think it would achieve what you would like it to achieve. Any dishonest public official would merely meet downtown at a hotel room or in the park, or someplace else, and he would not make a disclosure, you know.

The fact that my meetings are set on my calendar, and every appointment I have ever had is on my calendar, and that is subject to inspection under appropriate circumstances, and to me that is enough of a disclosure. The meetings that I had with Mr. Rohatyn, and he has the same recollection of it, each and every one of those appear on my appointment book, and my secretary's appointment book.

Senator TUNNEY. I think my time is up.

I would like, perhaps, when I have more time, to come back to this question.

Senator KENNEDY. I yield.

Senator HART. Go ahead.

Senator KENNEDY. Just on this point, could I ask Mr. McLaren what he does do? Do you make a note or memorandum of every time someone comes, or did you, when you were the head of the Antitrust Division? When someone came to talk to you, what was your practice?

Mr. McLAREN. If I may say, my system was not nearly as consistent as Mr. Kleindienst's. I customarily put appointments on my appointment book, and my secretary kept a copy. And she, when she would show people in, particularly my appointment book would show one name, and she would give me a list of all the people that were showing up.

And I would give that list back to her, and I think she completed her record of it. But, I could not say that every meeting I had or ever had was recorded and so on.

Senator KENNEDY. But, did you keep notes? Did you keep notes?

Mr. McLAREN. Sometimes yes, sometimes no.

Senator KENNEDY. Thank you.

Mr. McLAREN. Very frequently, Senator, I had other people there taking notes because it is hard to conduct a meeting and at the same time be taking down notes.

Senator BAYH. Could I ask just one question? I am not certain that this was asked yesterday of both Mr. Kleindienst and Judge McLaren.

Did either of you gentlemen talk to Mr. Geneen or any other officials in the hierarchy of ITT?

Mr. KLEINDIENST. I have never met Mr. Geneen. I have never talked to Mr. Geneen. I would not recognize him if I saw him.

Senator BAYH. Mr. Rohatyn is the only member of I.T. & T.?

Mr. KLEINDIENST. The only member except Mr. Ryan who lives out there. I do not know what his job is in the company and—

Senator BAYH. Have you had a chance to reflect any more about the conversations last spring?

Mr. KLEINDIENST. Yes, I have. Mr. Ryan has been rather antagonistic toward me with respect to the I.T. & T. antitrust problems with the Department of Justice. He is a very loyal representative of his company, and he also has, a couple of times—the only time I ever talked to him was at these neighborhood parties—

Senator BAYH. He would not spoil the picnic by being antagonistic: would he?

Mr. KLEINDIENST. This is a neighborhood party, and there would be 20 or 30 or 40 people there. But, he was also very, very sharp in his statement to me that Mr. McLaren and myself were highly unreasonable in the ITT antitrust matters before the Department of Justice. I think, based upon the evidence you heard yesterday, there might be some, you know, basis for that.

But, we always took a very, a very rigid position in these cases, and my recollection is that at one of those in the spring of 1971 that an official of the company to get information about the economic or financial aspects of this, and that I indicated to him that I never closed my mind completely and that I would be willing to do that.

Senator BAYH. Now, I ask one other question. I wonder if you have had a chance to reflect, overnight, on whether you had ever talked to anybody down at the White House about the ITT case, and it would be—

Mr. KLEINDIENST. No, sir. No, sir. To the best of my recollection, but as I qualified that yesterday, I am talking to somebody at the White House almost constantly about a variety of problems, and it is not inconceivable that somebody up there could have made reference to the status of the ITT cases, you know, or something like that.

So far as consulting about, reporting to, getting directions from, going into depth on these matters or any other antitrust case, I have never had that experience.

Senator BAYH. How about Members of Congress?

Mr. KLEINDIENST. On I.T. & T.?

Senator BAYH. Yes.

Mr. KLEINDIENST. Not to my recollection. Not to my recollection.

Senator BAYH. Or members of the Republican National Committee?

Mr. KLEINDIENST. No. No; not to my recollection.

Senator BAYH. Is there some way this kind of discussion could have taken place, similar to the kind of discussion that must have taken

place that resulted in the letter that was written over Judge McLaren's signature in response to the Reuben Robertson letter?

Mr. KLEINDIENST. Well, possibly, Senator Bayh. So far as correspondence is concerned, I get it, you know, by the pound, you know, by the foot, and it comes in in such volume that a lot of it is handled by Mr. Wood, my Deputy, or other people on the staff. And still that which is left for me to go over in a day is voluminous.

It is one of the time-consuming things that I have, and to get a letter like that from, you know, I do not think I ever saw that letter. I think that Mr. Wood would have sent that down to the Antitrust Division, but then on the stuff I get I have to, if I am going to get by with this job, take a quick look at the top of it, and get an idea of the contents, and put my initials on it, and just shove it in the box and send it down to somebody else.

Otherwise, I would not even be able to get down to the stuff that I absolutely have to sign off on myself, and I have no recollection of that letter at all.

Senator TUNNEY. One of the things that I was leading up to in my questioning, Mr. Kleindienst, was there have been reports which I understand have been confirmed in California today by a statement of Lieutenant Governor Reinecke that in May Lieutenant Governor Reinecke and Mr. Waters came to the Justice Department and spoke to the Attorney General, John Mitchell, and told him that I.T. & T. was prepared to offer \$400,000, up to \$400,000 to have the Republican Convention in San Diego, and the Attorney General apparently, according to reports, liked the idea.

I say, I have not seen the press statement of Lieutenant Governor Reinecke, but it has been transmitted to me by staff that he confirms that such a meeting took place.

Now, I suppose that the best person to ask this question to is the former Attorney General, but until we have him on the stand, I would like to direct a question to you:

Was there any talk, to your knowledge, in the Justice Department, of the offer that had been made and transmitted by Lieutenant Governor Reinecke to the Attorney General?

Mr. KLEINDIENST. Senator Tunney, I have no knowledge of any such meeting. Mr. Mitchell never mentioned the subject matter to me, at any time, and other than the letter that Senator Kennedy developed this morning, my recollection of the first time that I ever heard of the ITT offer to San Diego was in the latter part of November or the first part of December. I have no knowledge of that meeting. Mr. Mitchell never mentioned it to me. I never discussed the ITT matters with him. He never ever mentioned a word of ITT, \$400,000, San Diego, Republican National Convention at any time, under any circumstances.

Senator TUNNEY. Mr. McLaren, what would your answer be to that?

Mr. McLAREN. The same. I had no knowledge of anything to do with the San Diego site as a convention city, and I never heard of the gentleman you mentioned.

Senator TUNNEY. And the fact that the meeting took place in May with the Attorney General, in which this offer was transmitted to the Attorney General, never filtered down into the Department?

Mr. McLAREN. No, sir. No, sir. I had absolutely no knowledge whatsoever.

Senator TUNNEY. And to your knowledge, were any of your assistants aware?

Mr. McLAREN. I am sure they were not, but it would not have made any difference as far as I am concerned.

Senator TUNNEY. Because you were the one that made the final decisions?

Mr. McLAREN. Right. Right.

Senator TUNNEY. And just to be clear in my own mind, Mr. Kleindienst, you never talked to any Congressman or any Senator about the ITT case?

Mr. KLEINDIENST. Not to my recollection, Senator Tunney.

Senator TUNNEY. No one attempted to pressure you?

Mr. KLEINDIENST. No, sir.

Senator TUNNEY. No member of Congress?

Mr. KLEINDIENST. No. No, sir. As you know, I am talking to Senators all of the time, and there is not anything I would raise. I have 50 or 60 telephone calls a day. Some Congressman or Senator might have mentioned I.T. & T., but it had no effect on me. I do not recollect it. I just have no recollection of it.

Senator TUNNEY. Is there any official besides Mr. Rohatyn and Mr. Ryan of the ITT Corp. that you discussed the ITT settlement with?

Mr. KLEINDIENST. None. None. I know no other official of that company.

Senator TUNNEY. And any other persons, aside from Mr. McLaren and the attorneys in the Justice Department, is there any other person that you discussed this with?

Mr. KLEINDIENST. The only person, Mr. Aibel, I might have at the April 29 meeting, plus other representatives of ITT, and I do not believe I have ever seen any of them since. I think that I walked past Mr. Aibel on the stairs yesterday, and somebody said that that was Mr. Aibel, and I did not even recognize him.

Senator TUNNEY. So, besides Mr. Rohatyn and Mr. Ryan, who works for ITT, there was no other person besides Justice Department personnel that you discussed the case with?

Mr. KLEINDIENST. That is correct, sir; to my knowledge. Now, somebody I might have met who I did not know was with ITT, but for me knowing that they were an official of this corporation, those are the only two gentlemen I have ever spoken to.

Senator TUNNEY. How much personal time did you invest on the I.T. & T. case?

Mr. KLEINDIENST. How much personal time?

Senator TUNNEY. Yes.

Mr. KLEINDIENST. Not very much.

Senator TUNNEY. How many hours?

Mr. KLEINDIENST. Oh, it would not be hours. That April 29 meeting—how long did that last? It might have been a couple of hours on that.

In my first meeting with Mr. Rohatyn I would estimate 20 or 25 minutes. The meeting on May the 10th, when he came in to find out what Mr. McLaren was doing was maybe 5 or 6 minutes. The July 15 and July 29 meetings, when he came in to complain about the harsh-

ness of the settlement could have lasted 5 minutes apiece, and then on September 14 when Mr. Rohatyn came in just on a social basis, that could not have lasted over 3 minutes.

So, I would say a total of 3 hours. And then on June 17, the conference with Mr. McLaren—now he and I—that would have been at a regular 8 o'clock meeting in my office in the morning. His recollection is we called Mr. Rohatyn at 10. I do not know if we stayed with it until 10 o'clock or not. I would be inclined to doubt it, but we might have.

So, with the June 17 meeting with Mr. McLaren, and then on the telephone with Mr. Rohatyn, I would say a total not to exceed 5 hours of my time was involved in the ITT matters.

Senator TUNNEY. And you have indicated that you have only spoken to members of the Justice Department besides Mr. Ryan and Mr. Rohatyn?

Mr. KLEINDIENST. Just Mr. McLaren. I did not discuss this with anybody else in the Department.

Senator TUNNEY. Mr. McLaren, how about you, did you discuss this case with other people besides Mr. Rohatyn and the attorneys working for ITT?

Mr. McLAREN. No. I have never discussed it. I have never met Mr. Geneen, never talked to him. The only other person I have talked to is the fellow I mentioned yesterday, and his name I cannot remember today, who begins with a G, and I understand he is the vice president in charge of the Washington office here. And he came in sometime early in 1970. I believe, to talk about possible ways and means of settling the case.

The gist of his argument was that it was a fine company, and I should not be harassing them the way we were, and it was a good thing for them to be taking over all of these companies, and so on.

I told him that there was a basis on which we would settle, and I pretty well outlined the divestiture I wanted, and the order against further major acquisitions, and he left, and I did not hear from him.

Senator TUNNEY. All right, thank you, Mr. Chairman.

Senator BURDICK. Mr. Chairman, I have a question.

Now, I missed part of the hearing yesterday afternoon, Mr. Rohatyn. Has there been any explanation why IT&T or its subsidiary offered this contribution to the city of San Diego?

Mr. ROHATYN. Senator, I cannot answer that as a director. All I can repeat is my testimony of yesterday, that the first I found out about this contribution was when it appeared in the newspapers in December, and when I raised the question following my learning this, with the chief executive officer, and I was told it was a normal business practice for a hotel to do, but that is the only direct answer I can give you.

Senator BURDICK. You mean that it is a business practice to offer \$400,000 for the business you might receive during a convention?

Mr. ROHATYN. Sir, I can only repeat what I was told, and as I testified yesterday, I was told by the chief executive officer of the company that that amount was incorrectly stated, the \$400,000, and that it was a normal business practice for the hotel corporation to go after convention business.

But, I have to limit myself to that statement because I do not know any more about it.

Senator BURDICK. You would have to do a lot of business to make up the \$400,000.

Mr. ROHATYN. Pardon me?

Senator BURDICK. You would have to do a lot of business to make up the \$400,000.

Mr. ROHATYN. As I say, I was told that that amount was incorrect.

The CHAIRMAN. What was the amount?

Senator BURDICK. Can anyone give us the answer why?

Mr. ROHATYN. Sir, I believe a company officer is going to testify on that subject.

Senator BURDICK. Thank you.

Senator ERVIN. Mr. Kleindienst, I would like to ask you a question. Is it not a general practice for people who hold political offices to make themselves accessible so far as they reasonably can to those who have problems within the Government or Nation?

Mr. KLEINDIENST. Senator, I think that is true, and then mine is not a political office. But, I think I have a duty to be available to people who have serious problems with the Justice Department. Many people, many people are sent to me by Congressmen and Senators. They are constituents, and I think that is a part of my duty.

Senator ERVIN. Well, the custom grows out of a two-fold necessity or desirability, I think. In the first place, I do not think that a person will last very long in political life in America if he wraps himself up in cellophane and retires to a monastery. I think as a matter of politics he opens up, he sees people. And the the second place, I think that it is a constitutional duty, so far as the limitations of time permit, because the Constitution says people have a right to petition the Government for redress of grievances.

And when I practiced law, and I thought that the Internal Revenue Service, or the Department of Justice, was about to do an injustice to one of my clients, and I felt like that I had some facts that would show that it was an injustice, it was my duty to my client to go and lay those facts before the subject officials.

Mr. KLEINDIENST. Most of the time I spend in talking to people, Senator Ervin, they are people who come to me for one reason or another, and then I usually, as a matter of custom, then arrange for them to see the appropriate Division head in our Department.

But, they come in to me, referred by business people, Congressmen, Senators, a variety of ways, and just the sheer volume of it I, as a matter of practice, send them up, and if I think it is worthwhile refer them to the person involved.

Senator ERVIN. In fact, is it not one of the principal functions of the office of the Deputy Attorney General to see that internal activities of the Department of Justice are carried on? A lot of problems arise out of State law, and State interpretations of wills, as well as interpretation of the Internal Revenue Service, and on many occasions I have avoided litigation by being able to go and talk to an official in the Internal Revenue Service, and call his attention to the State law which I contended really controlled the interpretation of a particular will, and determined which property was taxable, and so on, and avoided much litigation that way.

Mr. KLEINDIENST. Yes, sir. Yes, sir.

Senator ERVIN. I know every day, as a Senator. I have conferences with many people, and many times there is just one person that comes, and I guess those would be secret conferences. I have had many of

them, and I have not taken the precaution to keep records of who comes to see me, because I think the people in North Carolina know—or at least they have a little confidence—enough in my integrity that I do not have to buttress myself up with a lot of evidence in case somebody makes some charge against me sometime in the future.

Senator TUNNEY. Mr. Kleindienst, those same people would include consumer advocates as well?

Mr. KLEINDIENST. I see all kinds of people.

Senator TUNNEY. Like Ralph Nader?

Mr. KLEINDIENST. Well, when you have a Department where you must administer 17 different divisions, you have to talk about civil rights, antitrust, criminal law, environment, narcotics, prisons, immigration.

Senator TUNNEY. Thank you very much.

Mr. KLEINDIENST. Thank you, Senator Tunney.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Mr. Kleindienst, could we go down the chronology of events a bit to try and get a better understanding of the factual situation?

As I understand, first of all, I would like to ask Mr. McLaren about the early part of April or the latter part of March, the time of the first speech we have been able to find in which Mr. McLaren says nothing about the Department drive against conglomerates. Do you remember that, Mr. McLaren? It seems that there was a great deal written about the Department antitrust policy, and going after the conglomerates.

Your feelings and your commitment on this policy were generally well understood and well-known. There is a series of speeches that have been made by Department officials about this whole aspect of the antitrust policy.

Mr. McLAREN. You are speaking of 1969?

Senator KENNEDY. Yes.

Mr. McLAREN. Yes.

Senator KENNEDY. And then in just reviewing the statements or the speeches it does seem that after April 1, and this is the time I have been able to detect, or if you want to give us any other kind of time that there is very little said about the Department's drive against the conglomerates. The speech entitled "The Quality of Life and the Antitrust Laws: The Rewards of Competitive Alternatives," given before the antitrust section of the ABA, for example, does not even mention, as I understand it, the whole movement against conglomerates.

Do you recall, could you give us at least some kind of idea of what the thinking was moving in there, because it does appear on the one hand going through 1969—

Mr. McLAREN. Senator, customarily I made these speeches, and I was particularly active early in 1969 for the information of the bar, the antitrust bar, and customarily my speeches were picked up and reprinted, sometimes by CCH, the trade regulation service, and almost always by the Bureau of National Affairs, the antitrust and trade regulation service.

So, I did not repeat the same speeches over and over. There was a great deal of publicity given and great circulation of the testimony I gave before the House Ways and Means Committee, I think, early

in March of 1969, and then I do not think I made probably another speech on conglomerates and so on until, oh, maybe for 2 months.

And I did make speeches on other subjects, trying to get the whole picture out to the bar. But, I think it was in June of 1969 that the Attorney General made his Savannah speech that really confirmed and corroborated that this, indeed, was the administration's policy.

Have I answered your question?

Mr. KLEINDIENST. Senator Kennedy, may I comment on that, please?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. In the last 3 years I must have given approximately 200 speeches in the United States as the Deputy Attorney General, and I have what I call my stock speech. I do not have time to prepare it.

Senator KENNEDY. We all have those.

Mr. KLEINDIENST. I have appeared before all kinds of organizations, groups, north, south, east, and west, and the opening part of every speech I give on behalf of the Department of Justice has been the manner in which under Assistant Attorney General McLaren, supported by the Attorney General and the President of the United States, we have approached this whole problem of conglomerate acquisition.

And I have compared the aggressive, vigorous manner that McLaren did this, as compared to the lack of activity in the preceding administration.

And I think without exception, that is how I started every one of my speeches in the last 3 years.

Senator KENNEDY. Well, I will say this, Mr. McLaren, just in the review of the statements and the speeches, there was a much heavier emphasis on your part about the efforts being made by the Justice Department in antitrust actions against conglomerates prior to April, early April of 1971. I was just interested whether the change from that position is as you suggested here, that you sort of felt that you had covered the material or the waterfront, or that you did not feel that you needed to reiterate that, or whether the reason for the change was based upon other kinds of discussions, or other kinds of policy or decisions. And as I understand, your response to that is that you felt that you had sort of covered the material in terms of the waterfront publicly, and that certainly as far as the ABA speeches, you did not think that it needed any further elaboration.

Mr. McLAREN. Well, I think that a full review of my speeches and my testimony before congressional committees and so on will show that the pattern is consistent, and that we were spelling out a very vigorous prosecution policy, subject to our letting people continue to make mergers that were not anticompetitive. But, after the March speech, and in April, we filed the *Canteen* case, and you do not need much more advertising than that as to what the policy is. It was either just before or just after that that we filed our case. I think it was just before that we filed our case against Ling-Temco-Vought, and that got great circulation. I did not feel like I needed to go out and make a speech a day on the thing. It was well known.

Senator KENNEDY. Well, after the —

Mr. McLAREN. I might add, in that period, we also filed another conglomerate case against Northeast Goodrich.

Senator KENNEDY. Well, you had a strong speech, as I understand, on January 28, at the New York State Bar Association. Are you familiar with that?

Mr. McLAREN. Which speech, Senator?

Senator KENNEDY. 71, January 28, 1971. New York State Bar Association. You say in this talk, you say:

We responded in 1969 by moving against the conglomerate mergers of large firms. As you know, we instituted five major cases challenging these kinds of mergers. Our theory was then and is now these mergers eliminate potential competition, entrench leading firms, enhance reciprocity of power, and tend to encourage even further large mergers. And in the last hours of 1970 the trial judge in the ITT-Grinnell merger case found for the defendants and we are now considering an appeal from that decision.

And you say—

We believe our theories on conglomerate acquisitions are sound and will continue to enforce the Clayton Act in line with those theories.

Now, you also say—

Our belief is reinforced by the decision of the Court of Appeals for the Third Circuit last spring in the Allis-Chalmers case, which subsequently supported our views.

Now, did you say anything about the conglomerates after that speech that you know of?

Mr. McLAREN. We sued White Consolidated when it tried to acquire White Motors, and we were successful in that one.

Senator KENNEDY. Just in terms of speaking, or statements or speeches, was that the last time that you spoke about it that you remember? That you recall?

Mr. McLAREN. I have to review the talks, Senator. Sometimes I would speak at meetings off the cuff, and there were three or four things that we were pounding away on. And I think we are a little bit different in this administration. One of them was the effort we put into conglomerate merger things, and the other was reciprocity, systematic reciprocity, which neither the Federal Trade Commission nor the Department had paid much attention to before. And I guess we might have filed 30 or 40 suits against some of the biggest companies in the country.

Senator KENNEDY. Yes. Well, the point that I am suggesting is that it appeared, in practically all of your statements since you had been the head of the Antitrust Division, that you had made a very strong point, as was suggested in this speech about the role of the Antitrust Division in the conglomerates.

Then we see at least in the reviewing of your public statements that around sometime in the late spring, you do not see those kinds of comments coming in in any of these statements or speeches. And I would just, I was just wondering why that was the case. And I think that you have given an explanation here that you felt that your actions were stronger than words or speeches, and that you had covered the waterfront pretty generally in terms of it, and I think Mr. Kleindienst had indicated that every time he spoke, he also indicates the antitrust policy.

Mr. McLAREN. Well, I think I would like to answer—

Senator KENNEDY. I am ready to move on to some other things.

Mr. McLAREN. I would just add to that—

Senator KENNEDY. That is a fair representation?

Mr. McLAREN. Yes, but by 1971, I think there had been a marked dropoff. I think we were having really a major success with our anti-merger policy, and I did not need to say so much about it any more.

Senator KENNEDY. Yes.

Senator HART. Mr. Chairman, if Senator Kennedy is going to another point, could I try to get clear in my own mind one of the conglomerate suits that we talked about yesterday? Would you yield?

Senator KENNEDY. Yes.

Senator HART. The handling of the *Canteen* case.

Mr. McLAREN. Yes, sir.

Senator HART. You remember we began and I asked were you and Mr. Kleindienst ever in disagreement and you thought not. Then, as I recall it, you had an opportunity to see the complaints in the *Canteen* case, and that no request was made for a preliminary. And my impression is that you explained that in part that it was the judgment based on the fact that a court is never happy when you come in on the eve of a merger and ask for a temporary?

Mr. McLAREN. That was certainly part of it.

Senator HART. Have you had a chance to further refresh your recollection on that case?

Mr. McLAREN. Yes, overnight I did talk with some of the people on my former staff, and tried to reconstruct what had happened there and what happened during the period after I first recommended suit. And then, I do not know, a month went by after we actually filed. I think at that time I recommended suit, as best I have been able to reconstruct so far, we had maybe 4 or 5 days, or possibly a week before they planned to close. We told them, as I recall now, that I planned to recommend suit. I think that they asked for an appeal to Mr. Kleindienst, and they asked me to set up a meeting. As far as I can tell, and I must say that I do not have any independent recollection of it, such a meeting was held.

The attorneys for ITT came in, Mr. Aibel, and his assistant, I think, and some attorneys for Canteen came in. And I think they were Chicago attorneys. I cannot recall. In any event, the pitch made by the ITT attorneys I think again was, again, the one they had been making to me before, that my policy was not supported by the law, and that there was no justification in cases and legislative history and so on and so on. The Canteen pitch, from their lawyers, was different. They said even if you are right on this, you have to admit it is a test case kind of thing. We have a very bad situation in Canteen. We—and I cannot remember what the precise facts were—but the founder or the chief ramrod had a stroke or died, and it all is in my mind that ITT had already put some management people in there. I may be wrong on that. That may have been another case. In any event, they had made a very strong pitch that we should go ahead and let them close, and that they would, that ITT would hold separate so that if we were right in our theories, there could be a divestiture. I think that after that meeting, I made the determination, after further conferences with my staff, that in the Chicago court, which was not known for its sympathy to antitrust under former circumstances, and with that pitiful story to be told by Canteen, that we would have a good chance of starting out my program with a loss on a preliminary injunction. And

so, at that time, as I now reconstruct it, and we are still trying to figure out exactly what happened, and for that reason, I changed my recommendation that we try and stop it ahead of time, and that rather we go ahead and sue. But, if they wanted to close, why that was at their own risk.

Senator HART. I ask this in an effort to have a record that is inclusive; and, if it is inclusive, it is inevitably fair.

Mr. McLAREN. Yes, sir.

Senator HART. You did recommend in the case of Canteen that suit be filed and requests for a preliminary order be obtained?

Mr. McLAREN. Yes, sir; originally.

Senator HART. Originally. You have described as nearly as your memory will permit the circumstances that followed. How fair would it be to say that one of the circumstances was the passage of time, which increased the validity from a lawyer's point of view of saying, Well, I cannot ask for a preliminary because it is on the eve of the merger? The outside critic will point to that.

Mr. McLAREN. Yes.

Senator HART. It is a fair criticism.

Mr. McLAREN. This is certainly a consideration. As I said yesterday, no judge likes to have a temporary restraining order put under his nose at 4 o'clock in the afternoon to stop something that is going to be happening tomorrow. And that is a matter of consideration. However, it was the situation here that ITT postponed the closing while we deliberated on this, and while we heard their further story, their appeal to Mr. Kleindienst, so-called, and the story that Canteen was telling about their management difficulties. You see, what Canteen would say to the court was that we cannot hold this company together for a year while you are trying this case, and I am very experienced in losing cases in preliminary injunctions on that ground.

Senator HART. Well, because it has been and will be a contentious point in the review of the handling of cases involving ITT, I would suggest that it would be in the best interests of everybody if we could just have such of that file as remains so that the continuity will be apparent and judgments can be drawn whether it was wise or unwise; fair or unfair.

Mr. McLAREN. Well, I will be glad to try to continue and reconstruct the thing. I think that—

Senator HART. I think the file itself would give all of us who have a concern the basic—

Mr. McLAREN. Well, the only reservation I have, Senator, is that it has been historically true, and it was my policy while I was in charge of the Division, that the actual Attorney General memo, or A.G. memo, that goes up and reviews all of the evidence, and the law, and makes recommendations, contains in criminal cases a lot of material from the grand jury; in civil cases a lot of material from CID investigations, and other confidential material. We have never, we never while I was in charge of the operation, let that out. That is a confidential investigatory document. Otherwise certainly the file would be available.

Senator HART. Given the attention that has been paid it, I hope that you can review that file, transmit it, and if there are documents that

you feel an obligation to third parties requires to be treated in confidence, that you would identify them and we would respect that.

Mr. McLAREN. Well, we certainly—we will review it, but these gentlemen have the say on it, on the separation of church and state here.

Senator KENNEDY. I would like to comment. Does that mean you are going to provide it or not? I did not understand that last answer.

Mr. KLEINDIENST. I think I had better respond to that, Senator Kennedy. We will look at the file and we will furnish to the committee those documents that we do not feel violate our policy with respect to the protection of investigatory matters or matters that would be harmful to third persons.

Senator KENNEDY. Well, then, and will you tell us the ones that you cannot make available, and the reasons for it too? You will indicate which ones?

Mr. KLEINDIENST. Any documents that we have that we will not give to you we will identify and give you our reasons.

Senator KENNEDY. If you can identify it and give a general description of it.

Mr. KLEINDIENST. Identify the general nature of the document and the reasons why we will not furnish it.

Senator KENNEDY. Now, just in terms of this chronology, now, sometime, as I understand again now, I want to try to develop a chronology. Sometime before the 18th, as I understand, Mr. Kleindienst and Mr. Ryan discussed ITT at a party, and Mr. Kleindienst agreed to see I. T. & T. officials. Am I right in that?

Mr. KLEINDIENST. That is my recollection.

Senator KENNEDY. In your exchange with Senator Bayh, you had indicated that you had run into this Mr. Ryan on other occasions, and that he seemed perturbed at you and the Justice Department generally in the handling of the ITT case.

Mr. KLEINDIENST. The only occasions would be the neighborhood situations.

Senator KENNEDY. Well, could you tell us about, you know, the number of occasions and whether there were any conversations, and sort of the nature of those conversations at other times?

Mr. KLEINDIENST. I think we have had three or four of those parties since I have lived in the neighborhood. I have missed some of them. None have been at my house. Mr. Ryan has never been in my house. I have never been in his. The ITT situation was rather contentious, you know, in 1971, and I only have one recollection of one specific meeting. But, there could have been more, one more, but I only recollect one.

Senator KENNEDY. So, you only recollect one, but there may have been, you say, a number. You saw him at a number of these block parties or——

Mr. KLEINDIENST. I never discussed ITT business, he never did with me at those other one or two times in 1971.

Senator KENNEDY. One or two times, and it was just the one conversation that you had some time in April?

Mr. KLEINDIENST. I believe so, Senator, and there had been a large group of people present in a room.

Senator KENNEDY. Right. Well, that was some time in April?

Mr. KLEINDIENST. March or April, Senator.

Senator KENNEDY. And you have not been in touch with Mr. Ryan, and since yesterday—

Mr. KLEINDIENST. No, sir. No, sir. I have not talked to him; no.

Senator KENNEDY. Now, Mr. Rohatyn.

Mr. KLEINDIENST. The last time I saw Mr. Ryan was at another neighborhood party about 3 weeks ago, and I have not seen him since or talked to him since.

Senator KENNEDY. Now, Mr. Rohatyn, have you been able to discover since yesterday how the discussion between Mr. Kleindienst and Mr. Ryan eventually developed to a situation where you were called in by Mr. Geneen and told to call Mr. Kleindienst?

Mr. ROHATYN. No, sir.

Senator KENNEDY. No, sir; what?

Mr. ROHATYN. I did not. I did not find out anything new, Senator. It is just that my recollection is the same as yesterday, and that I was asked by Mr. Geneen to develop an economic case to present to Mr. Kleindienst.

Senator KENNEDY. And you do not remember from your conversations with Mr. Geneen how that conversation—could you tell us what you remember about your conversation?

Mr. ROHATYN. Senator, what I remember was that I was told—

Senator KENNEDY. Did he call you or—

Mr. ROHATYN. I think at a meeting in his office.

Senator KENNEDY. But he called you, you did not call him? He called you?

Mr. ROHATYN. Mr. Geneen?

Senator KENNEDY. Yes.

Mr. ROHATYN. Yes, sir.

Senator KENNEDY. Can you tell us the best you remember about that?

Mr. ROHATYN. To the best of my recollection, I was told Mr. Kleindienst had indicated that he would receive a financial expert who could make an economic case with respect to a possible hardship to the company, and going beyond the company of the Hartford divestiture.

Senator KENNEDY. Well, you mean sort of that the subject area was already spelled out to you as to what Mr. Kleindienst wanted to hear about? It was not just sort of a call—

Mr. KLEINDIENST. I did not want to hear anything.

Senator KENNEDY. Do I understand, because—this subject matter was sort of spelled out to you as to what you ought to be talking to Mr. Kleindienst about?

Mr. ROHATYN. I was limited, Senator, to areas of economic hardship by Mr. Geneen.

Senator KENNEDY. Mr. Geneen indicated to you that if you called, Mr. Kleindienst would be receptive to this type of argument; is that right?

Mr. ROHATYN. No, sir. I do not think that he said—

Senator KENNEDY. Then you tell us how he said it.

Mr. ROHATYN. Mr. Geneen charged me, Senator, to the best of my recollection, with developing a case of economic hardship for an ITT

divestiture of Hartford, and told me that Mr. Kleindienst would receive me and listen to the argument.

Senator KENNEDY. That is not what you just told me a minute ago. You told me—could the reporter read back his earlier response to the question?

(Reporter read back witness' response.)

Senator KENNEDY. Right there. You were told that Mr. Kleindienst would receive a financial expert on an economic hardship in the case?

Mr. ROHATYN. Senator, I believe that is correct. I was asked to make an economic case, and it is the area of the conversation, and the area of the subject matter that I was supposed to discuss with Mr. Kleindienst which was outlined to me by Mr. Geneen.

Senator KENNEDY. And was it further outlined to you that Mr. Kleindienst would be receptive to an economic argument?

Mr. ROHATYN. That he would listen to it, Senator. That is what I was told.

Senator KENNEDY. That he would listen to it? But you were told what the area or what the parameters of the case would be that you would be—

Mr. ROHATYN. That I would be required to make. Yes, sir.

Senator KENNEDY. And it was indicated to you that Mr. Kleindienst would listen to those?

Mr. ROHATYN. Yes, Senator.

Senator KENNEDY. Now, have you been able to clear up when that was exactly when you phoned on—when Mr. Geneen talked to you?

Mr. ROHATYN. Senator, I have not been able to pinpoint it down more exactly than yesterday, but it must have been undoubtedly within the first week or 10 days of the month of April.

Senator KENNEDY. And then on April 18, you telephoned Mr. Kleindienst, is that right, on or about April 18?

Mr. ROHATYN. On or about April 18, before April 20.

Senator KENNEDY. Now, as I understand, on April 19, the Justice Department requested a last-minute delay for its filing of an appeal in *Grinnell*. This is the *ITT* case in the Supreme Court, is that right, Mr. Kleindienst?

Mr. KLEINDIENST. I beg your pardon, Senator Kennedy?

Senator KENNEDY. That on April 19, this is the day after Mr. Rohatyn's phone call to you, the Justice Department requests a last minute delay for its filing of appeal in *Grinnell*, is that correct? I believe that—

Mr. KLEINDIENST. We requested a delay, but I do not remember the date, Senator Kennedy.

Senator KENNEDY. Mr. McLaren, do you remember? I believe that is the date.

Mr. McLAREN. I could not place the date, Senator.

Mr. KLEINDIENST. Senator, may I make a correction in the record?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. I just had a consultation with my wife. She said that we entered Mr. Ryan's house for one drink at a neighborhood party, and we stayed about 5 minutes because we had to go to another function. So, my statement was incorrect that I had never been to his house, and I did not recall that.

Senator KENNEDY. OK.

As I understand, if we can get back now, we have the phone call of the 18th, the 19th is the request by the Department in the *Grinnell* case. Would you tell us, Mr. Kleindienst, why this request was filed since there had already been a 30-day extension in the *Grinnell* case?

Mr. KLEINDIENST. Well, there was just a problem as to whether this thing was to be filed in the request for the delay. Excuse me just a minute.

Senator KENNEDY. Yes.

(Short pause.)

Senator KENNEDY. If I could——

Mr. KLEINDIENST. Senator Kennedy, I do not recollect why that extension was asked.

Senator KENNEDY. Well, does Mr. McLaren have the petition there?

Mr. McLAREN. I was just looking at the memorandum we filed, or the Solicitor General filed, rather, as to the precise details as why we filed it at that time. I think that we said "additional time is needed for further study of the case and to permit consultation among various interested Government agencies with regard to whether the Government should perfect its appeal."

Senator KENNEDY. What was the doubt, Mr. Kleindienst, as to whether the Government should perfect its appeal?

Mr. KLEINDIENST. I do not know.

Senator KENNEDY. Well, were you aware that this was being filed?

Mr. KLEINDIENST. Yes, I was generally.

Senator KENNEDY. This was, this was 9 days after the usual deadline for such requests, as I understand it.

Mr. KLEINDIENST. Could have been.

Senator KENNEDY. Well, it says, does it not, Mr. McLaren, that "additional time is needed for further study of the case and to permit consultation among various governmental agencies with regard to whether the Government should perfect its appeal." Did you have any doubts, Mr. McLaren?

Mr. McLAREN. I think I indicated earlier, Senator, that I felt if we could get all three cases up together, they were very strong. I know that there are people who did not feel that we could win on this. We had a very tough set of factfinding against us, and I think there was a school of thought that not only could we not win it, but that we should not win it.

Senator KENNEDY. Didn't you know this before?

Mr. McLAREN. Among antitrust lawyers——

Senator KENNEDY. Were you not aware of this before the 19th, 9 days after any new extension should have been requested?

Mr. McLAREN. Well, it was fairly continuous, I would say.

Senator KENNEDY. Well, as I understand, there had been a 30-day extension. And then there had been 9 days in addition after the usual deadline, and then, when this was filed on the 19th for the reasons, as has been stated now, and you have read here, that there was a doubt that governmental agencies should perfect the appeal. And I have difficulty in just understanding why, with understanding your own reasons now for the reservations, why those reasons were not indicated to the Supreme Court before.

Mr. McLAREN. Well, I do not think that we ever inform the Supreme Court precisely what our doubts are, nor do we discuss it outside of the Justice Department in any great degree. I think that there has been an unusual amount of interest, inner agency, in the antitrust division's policy over the last 3 years, and particularly the conglomerate merger policy. I meant to add, for Senator Hart's benefit, that back in April of 1969, which is the time we were talking about filing the *Canteen* case, another thing that was going on at that time was the review of antitrust policy by an interagency committee, of which I was the chairman. And ultimately we developed a memorandum on that subject, to which we all agreed, and how that ties into the time period on the filing of *Canteen* I do not know. But I think you can talk to any antitrust lawyer outside of the Government, and he will tell you that this has been a controversial subject, and I have felt very strongly that Congress could help us out on the conglomerate merger front if it wanted to pass some legislation. But, we were not going to stand by and say our hands were tied when the Supreme Court had to some degree, in four or five cases, pointed the way, and when the Congress itself had indicated that the Celler-Kefauver Act was designed to permit the courts to intervene in merger trends, and including conglomerate mergers.

Now, precisely the discussions that went on during the extension of time in *Grinnell*, I just really do not recall. I am sure we reviewed our brief further, and I think that ultimately we filed it as it pretty much had been in draft, and at the time we got our extension.

Senator KENNEDY. Actually, you filed it just exactly the same, except for the change of date from April to May, did you not?

Mr. McLAREN. That was —

Senator KENNEDY. So, there really was not any change?

Mr. McLAREN. Well, I think that is the best of my recollection. I would not have been surprised if there were some changes in it, but basically we did file it, and it was pending at the time of our negotiations.

Senator KENNEDY. I ask you, Mr. Kleindienst, in your conversations with Mr. Rohatyn, was the *Grinnell* case ever mentioned?

Mr. KLEINDIENST. I think on either the July 15 or June 29 meeting, after the June 17 settlement, framework over the telephone, that one of the things that he mentioned to me was his opinion that it was not necessary for them to have to divest the Grinnell completely, but only the fire protection aspect of it. And I believe, I am sure that is the only time he mentioned it. He did not mention that to me before, and I gave him the same answer, that that could have been the June 29 or July 15 meeting, and I told him that was a subject matter that his attorneys would have to take up with Mr. McLaren.

Senator KENNEDY. But, did he mention it to you on the April 18 phone call?

Mr. KLEINDIENST. No, sir. No, sir; he did not discuss any legal aspects of it. He was only talking —

Senator KENNEDY. But just did he mention the name?

Mr. KLEINDIENST. No, sir. No, sir.

Senator KENNEDY. Mr. Rohatyn?

Mr. ROHATYN. No. That is correct.

Senator KENNEDY. You were just at that one conversation trying to arrange the meeting with him?

Mr. ROHATYN. That is correct.

Senator KENNEDY. But, you did not mention the *Grinnell* case?

Mr. ROHATYN. I did not mention the *Grinnell* case.

Mr. KLEINDIENST. I do not believe he mentioned it on April 20 when he came in. He was talking about Hartford, and its divestiture, and the financial, economic aspects of that.

Senator KENNEDY. What is your, Mr. Rohatyn, recollection as to the first time you mentioned Grinnell?

Mr. ROHATYN. Senator, Frankly, I do not recollect mentioning Grinnell, but it may well have been at one of the two meetings after the proposal of the Department of Justice, that I would have, that I would have mentioned the fire protection division of Grinnell.

Senator KENNEDY. Mr. Geneen did not mention that to you, though? Did he mention that to you, the *Grinnell* case, when you had your conversations with him?

Mr. ROHATYN. With respect to his request to see Mr. Kleindienst?

Senator KENNEDY. No; at all, in the conversation?

Mr. ROHATYN. I am sorry, Senator. Do you mean in the conversation at the meeting in which I was asked to see Mr. Kleindienst and make an economic case?

Senator KENNEDY. Yes.

Mr. ROHATYN. I do not believe it was mentioned; no, sir.

Senator KENNEDY. Was there anybody else, anyone else at that meeting between you and Mr. Geneen?

Mr. ROHATYN. I would have to assume that Mr. Aibel would have been there, but my recollection is not all that exact. But, I would have assumed that Mr. Aibel would have been there.

Senator KENNEDY. Now, on April 20, you had the meeting, Mr. Rohatyn had the meeting with Mr. Kleindienst, and you said yesterday, Mr. Kleindienst, you said you would provide us with any memorandums of meetings with Mr. Rohatyn.

Mr. KLEINDIENST. I am sorry, Senator Kennedy, I was looking at something in the file. Would you repeat that, please?

Senator KENNEDY. Right. On the 20th of April, now, you had the meeting, you and Mr. Rohatyn had a meeting in your office?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. And you indicated yesterday that you would provide for the committee any memorandums that had been prepared as a result of any of these meetings. So, you had indicated on some that you had not taken any notes, and you indicated on some you had.

Mr. KLEINDIENST. Senator Kennedy, I said I took notes on no meetings, except notes on the April 29 meeting, which I gave to Mr. McLaren at the end of that meeting, and I have furnished those to the committee this morning.

Senator KENNEDY. Those are the only notes you had of the meetings?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Now, Mr. Rohatyn, did you make any notes at any of these meetings?

Mr. ROHATYN. No, sir.

Senator KENNEDY. None of the meetings at all?

Mr. ROHATYN. No, sir. No, sir.

Senator KENNEDY. That you were involved in?

Mr. ROHATYN. No, sir.

Senator KENNEDY. And you just reported back to Mr. Geneen; is that right?

Mr. ROHATYN. That is correct, Senator.

Senator KENNEDY. And who else?

Mr. ROHATYN. I believe when I reported back on the first meeting, on the meeting of April 20, I believe Mr. Aibel was with Mr. Geneen, but again, my recollection on that point is vague. But I know I reported to Mr. Geneen.

Senator KENNEDY. All right, now, Mr. Kleindienst, approximately on the 20th, unless you have got a better date, you called Mr. McLaren to set up a meeting. Is that right? Or can you give us another date?

Mr. KLEINDIENST. Well, after I talked to Mr. Rohatyn, my recollection of my conversation with him is that he asked me that I direct Mr. McLaren to have such a meeting. I told him that I would not do that, but that I would consult with Mr. McLaren and get back to him. I consulted with Mr. McLaren, and he was willing to have the meeting, and it was set up. By whom I do not know. I did not arrange the meeting.

Senator KENNEDY. Do you remember that conversation, Mr. McLaren? Was this a request for a meeting, or do you know how that came about?

Mr. McLAREN. Yes. I think I indicated in my earlier statement that I thought the first request had been made sometime in March, and I think——

Senator KENNEDY. Excuse me, the first what?

Mr. McLAREN. What probably happened was Mr. Kleindienst indicated to me that his neighbor had asked him about this and what was my attitude on it.

Senator KENNEDY. Wait just a minute. What happened in March?

Mr. McLAREN. I said I thought I first heard about ITT's hardship argument for the first time in March.

Senator KENNEDY. Now, how did you——

Mr. McLAREN. That is in my prepared statement.

Senator KENNEDY. Who did you hear that from?

Mr. McLAREN. I think I heard it from Mr. Kleindienst, and I think that probably what happened was that he told me about this talk with his neighbor.

Senator KENNEDY. I see. That was——

Mr. McLAREN. So, when he came in and said that Mr. Rohatyn wanted a conference to bring in his people, it did not come as a surprise to me. We set up the meeting on whenever it was, April 29.

Senator KENNEDY. You set up the meeting?

Mr. McLAREN. Yes.

Senator KENNEDY. Mr. Kleindienst set it up, or you set it up?

Mr. McLAREN. I think Mr. Kleindienst and I agreed on a date, and I held it. It was held in my office. I do not know if you have ever seen my office, Senator. It was about 40 feet long and about 20 feet, 25 feet wide, and you have chairs spread around in a semicircle like that, and they pretty well filled the room. And Mr. Kleindienst sat off on the left, and I presided at that meeting, and it was my meeting. At the end of it, I said that I was going to do, that I would have this ex-

amined by these experts, and we would review it ourselves, and we would let them know.

Senator KENNEDY. If you remember, Mr. Kleindienst, the phone call to Mr. McLaren, besides the request for the meeting, what is your recollection, your best recollection of any conversation about the *Grinnell* case?

Mr. KLEINDIENST. At the time I talked to him, after I talked to Mr. Rohatyn?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. I have no recollection of that at all.

Senator KENNEDY. Do you, Mr. McLaren? At the time of the conversation that you had with Mr. Kleindienst about having the meeting to consider the economic hardship argument, do you remember whether the *Grinnell* case was mentioned at all?

Mr. McLAREN. No, I do not. I do not think probably it was. My own recollection really is that they talked about this in March, and what had taken them so long to come in to make their pitch. I really did not have any great recollection.

Senator KENNEDY. Could you tell us, Mr. Kleindienst, what was sort of the gist of it, how the conversation went, with Mr. McLaren?

Mr. KLEINDIENST. On what?

Senator KENNEDY. About setting up the meeting, and Mr. McLaren has indicated to us what he remembers about it.

Mr. KLEINDIENST. I do not remember. That would have been just one of 50 items I would have talked about that day. I have no recollection of that.

Senator KENNEDY. Mr. McLaren, do you remember in the conversation whether Mr. Kleindienst had expressed any opinion about the legitimacy of the economic arguments involved by Mr. Rohatyn?

Mr. McLAREN. I do not recall that he expressed any views on it, what I called the financial argument. At the end of the meeting, when all of these folks came in, and I remembered that he had notes, and he left them with me. He took notes during the meeting, and I now remember seeing the notes, that when he got up and left, he handed me his notes, and left, without comment, so far as I can remember.

Senator KENNEDY. Why do you think you took notes at that meeting Mr. Kleindienst?

Mr. KLEINDIENST. Why?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. Well, I think I had a habit, or I did as a lawyer, that when I went to meetings I would partly just occupy my hands, and I would just make notes of the meeting, you know. When a lot of people are talking and they have a lot of factual information, I guess I just did it.

Senator KENNEDY. Well, what would happen at the other meetings? Why did you have such an irrepressible urge to do it at this one?

Mr. KLEINDIENST. No. 1. I was sitting there as a spectator at that meeting. I was not a participant. The meeting went on. There were a lot of complicated financial matters being discussed, a lot of which I did not understand, and I do not know why I kept the notes, Senator Kennedy. I know I did not take them with me. I have not even seen them until this hearing. They are not very meaningful, I do not think.

Senator KENNEDY. Now, as I understand, sometime after the 20th. Mr. McLaren, you called the Treasury; is that right? Sometime after April 20, you called the Treasury?

Mr. McLAREN. Sometime after our meeting—

Senator KENNEDY. To set up the meeting in your office on the 29th, after you talked to Mr. Kleindienst and he indicated—

Mr. McLAREN. Oh, yes. Yes.

Senator KENNEDY. So, you called the Treasury?

Mr. McLAREN. I probably called Mr. MacLaury because he had also been in on the LTV case. In other words, I called him personally.

Senator KENNEDY. MacLaury probably?

Mr. McLAREN. MacLaury.

Senator KENNEDY. MacLaury. And had you had conversations with him before about this case?

Mr. McLAREN. Not that I recall.

Senator KENNEDY. He was the only one that you remember talking to over in the Treasury Department about the case?

Mr. McLAREN. As far as I know.

Senator KENNEDY. And was the Treasury the only department that you spoke to or that you called for people to come to the—well, about this, now during this period, prior to the 29th, you called the Treasury in order to get some participation from Treasury experts. Did you call any other department?

Mr. McLAREN. I do not think so. I do not recall any.

Senator KENNEDY. And you did not talk to the White House during this period at all?

Mr. McLAREN. No, sir.

Senator KENNEDY. The extension request on the *Grinnell* request says that other departments are involved. Could you tell us what those other departments, consultation among the various interested governmental agencies, could you tell us what other agencies were involved? Is that just the Treasury?

Mr. McLAREN. I do not know of any conferences that were held during the extension as of this time. I just do not recall it.

Senator KENNEDY. Who would have written that application?

Mr. McLAREN. Who would have prepared that?

It is the Solicitor General's office.

Senator KENNEDY. He says there a variety of governmental agencies.

Mr. McLAREN. I have not thought about this particular subject for quite some time, and I did not write the petition, so I really should not speculate on what was in the minds of the fellow that did draft it. However, I think it is only fair to say that not everybody in the Solicitor General's office, as a matter of antitrust law, was completely enthusiastic about our prospects in this case as I was.

Senator KENNEDY. And then we have come to April 29, which is the big meeting in the office. I have some more questions, but I am taking some more time, here, Mr. Chairman.

The CHAIRMAN. Go ahead. I want to wind these witnesses up.

Senator KENNEDY. OK.

Senator BAYH. May I ask just one?

Senator GURNEY. I have one question I want to get in here to clarify a point.

Senator BAYH. Excuse me. I would like to just ask one question of Mr. Kleindienst so that he and we may think about this over the weekend. I note with some interest that Senator Tunney referred to one of the sections of the Federal Code dealing with political activities and contributions thereto. As of this moment, we really do not know—at least I, as a member of the committee, have not been able to see all the evidence actually presented. Hopefully we will get this presented relative to just exactly what was done between ITT and the city of San Diego and the Republican Party and who was involved. I would just like to ask you, Mr. Kleindienst, as the man who might well be called into position as Attorney General to judge the merits of the given case—whether or not a law was violated—how you would interpret 18 U.S.C. section 610 which reads as follows:

It shall be unlawful for any corporation whatever to make a contribution or expenditures in connection with any election at which President and Vice Presidential electors are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices.

Now, if it can be proven that a corporation makes a contribution of \$100,000 or \$400,000 in an effort to try to secure one of our major parties national conventions in a city, what is your judgment about whether it does or does not fall within the confines of that statute?

Mr. KLEINDIENST. I do not have an opinion on it, Senator Bayh. I would have to get, you know, the precise facts.

Senator BAYH. Well, let me state the precise facts, and then I will read the precise language. Let us have a hypothetical fact in which corporation A makes a contribution of \$400,000 to city Z to secure the national convention for party R.

Mr. KLEINDIENST. Or party D. Party D or R.

Senator BAYH. Party D does not have \$400,000. I know that. Now, let me read again:

It shall be unlawful for any corporation whatever to make a contribution or expenditure, or expenditure in connection with any election at which Presidential and Vice Presidential electors are to be voted for or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices.

Mr. KLEINDIENST. I do not know, Senator Bayh. It is customary for party D and party R, when they shop around for a city to have a convention, to get bids from cities, you know, to help them defray the cost of it. And city X, Y, and Z will offer to pay to party D and R, x number of dollars if they will bring the convention there. The reason is because it benefits the business community of that city with the large influx of people and the business it establishes in the city, and X, Y, and Z will profit from that. Then if in order to raise that money, the city of Chicago, or San Diego, or Miami Beach, goes to the business community and says, look, we are going to all profit by this convention here, we have agreed to put up \$800,000, and now we want all of those businesses, you know, who are going to profit by this business generated, we think you ought to divvy up your part.

It seems to me that that situation would not come within the parameters of that statute. This is my horseback opinion as of right now. If so, I think party D and party R ought to reexamine arrangements

that they have made in city X and city Z, not only this year, but in 1968 and 1964, and so on.

Senator BAYH. Would you recommend that we repeal this statute?

Mr. KLEINDIENST. Well, I do not think it is applicable to this situation, because I think the custom is for the corporation to make their contribution to the city, you know.

Senator BAYH. Let me just reread this. I am just looking at this statute for the first time. "To make a contribution or expenditure in connection with, a contribution or expenditure in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices." In connection with.

Mr. KLEINDIENST. Right. I have not thought about the statute either, and I have no definite conclusive opinion. Senator Bayh. It is my opinion that under the circumstances we are assuming that it does not apply. It very well might.

Senator BAYH. You do not think making a \$100,000 or \$400,000 contribution, and I am not suggesting you had any part of this, you know, I am suggesting—

Mr. KLEINDIENST. It would not make any difference if it were \$5. It does not make any difference if it is \$5 or \$500 or \$400,000 or \$100,000.

Senator BAYH. If this contribution is made in an effort to try to get one of our major parties to come to a city, then I do not see how anybody can read the language and not suggest that in connection with it, that that is an expenditure, and if that is not a contribution, is it not—

Mr. KLEINDIENST. Well, the words are there.

Senator BAYH. How do we record this for the record?

Mr. KLEINDIENST. I do not know. I would not want to express an opinion on it without studying it, Senator Bayh.

Senator BAYH. Well, I wish you would study it.

Mr. KLEINDIENST. You are a lawyer, and you have arrived at an opinion, and I have a hunch that some opinions will be obtained with respect to it.

Senator BAYH. Inasmuch as we have just enacted a rather significant campaign contribution reform act, I think that we had better make sure that we find out if there are other loopholes in other acts—

Mr. KLEINDIENST. Right.

Senator BAYH. That may be needed to be closed as well, and certainly if the language is as specific as this, and can be construed by the highest political—I mean the highest law enforcement officer of the land as leaving leeway for something that is an obvious end run, then I think we ought to know all about it.

Thank you, sir.

The CHAIRMAN. Senator Gurney.

Senator GURNEY. Yes. I would like to clarify a point with Mr. Rohatyn. In Senator Kennedy's questioning about this arrangement of a meeting with Mr. Kleindienst to discuss these financial matters, I think you testified that you had a phone call from your corporation president, Mr. Geneen, that he indicated in the phone call that Mr. Kleindienst would be receptive if you came in and talked to him about this financial aspect of the antitrust action. Is that not correct?

Mr. ROHATYN. Sir. I did not say that Mr. Geneen told me that on the telephone call. I believe I said that we had a meeting, that I went

to a meeting at Mr. Geneen's request, and that at that meeting I was asked to develop the economic case against the divestiture of Hartford, and I was told to arrange an appointment with the Deputy Attorney General to come in and make the argument on that subject.

Senator GURNEY. Well, didn't you also say that Mr. Geneen indicated that the Deputy Attorney General would be receptive to your contacting and meeting with him? Did you say that?

The CHAIRMAN. Excuse me. Did he answer the question?

Senator GURNEY. He has not answered the question.

Mr. ROHATYN. That Mr. Kleindienst would be receptive to such a meeting; yes. Yes, sir.

Senator GURNEY. That is what I am trying to clarify. Now, then, my question is, Mr. Geneen never said to you that he had any phone call with Mr. Kleindienst about the meeting, did he?

Mr. ROHATYN. No, he did not, Senator.

Senator GURNEY. Well, that was the inference that was left in the answer, and that is what I wanted to straighten out. In other words, if he had any receptive idea that you could talk to him about this, there is certainly nothing wrong with that. It must have come from Mr. Ryan, who was the I.T. & T.'s man in Washington, is that not correct?

Mr. ROHATYN. I do not know who it came from, Senator, but certainly Mr. Geneen did not indicate to me that he had spoken with Mr. Kleindienst.

Senator GURNEY. Thank you.

The CHAIRMAN. Now, we are going to recess until 10 o'clock on Tuesday morning.

Mr. Kleindienst.

Mr. KLEINDIENST. Tuesday morning, Senator?

The CHAIRMAN. Yes.

Mr. KLEINDIENST. Does the judge have to return, Judge McLaren? He is a sitting judge in the northern district.

The CHAIRMAN. Senator Kennedy has a number of specific questions.

Senator KENNEDY. Not specifically directed toward the Judge. He has been very helpful, I think, in completing the record, I am not interested in delaying him, Mr. Kleindienst, but he has been helpful.

Mr. KLEINDIENST. Do you want Mr. Rohatyn?

Senator KENNEDY. Yes.

The CHAIRMAN. At 10 o'clock on Tuesday morning.

Senator KENNEDY. Well, I think maybe I ought—I do not know.

The CHAIRMAN. 10:30, Roman said.

Senator KENNEDY. I think before I make any unilateral decisions, I think there are a number of people here, and I think it would be important that he come back then on Tuesday.

The CHAIRMAN. Now, did you have any more questions?

Senator TUNNEY. Mr. Chairman, I do have some more questions which I would like to ask but I will ask them on Tuesday if we are going to have a meeting.

The CHAIRMAN. Yes, we are going to meet on Tuesday at 10:30.

(Whereupon, at 12:50 p.m., the hearing was recessed to reconvene on Tuesday, March 7, 1972, at 10:30 a.m.)

(The committee subsequently determined to meet on Monday, March 6, 1972, at 10:30 a.m.)

RICHARD G. KLEINDIENST

MONDAY, MARCH 6, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Burdick, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. I am going to read into the record a letter which I received this morning from Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation.

DEAR MR. CHAIRMAN: On Thursday evening, March 2, 1972, this Bureau was requested to locate Mrs. Dita D. Beard for service of a subpoena calling for her appearance before the Senate Judiciary Committee.

Investigation was instituted immediately and it was learned that Mrs. Beard had flown to Denver, Colorado on March 2, 1972. It was also determined that her three children had followed her to Denver on March 2 and 3, 1972.

Mrs. Beard was determined to be in the Rocky Mountain Osteopathic Hospital, Denver, Colorado, where she was admitted on the evening of March 3, 1972.

The attending physician would allow no visitors until Mrs. Beard could be examined by a heart specialist on the morning of March 4, 1972. After examination by a specialist, Special Agents were advised that Mrs. Beard had severe angina pectoris and an impending coronary occlusion. The doctors would not permit agents to serve the subpoena on the afternoon of March 4, 1972. Mrs. Beard's personal physician flew to Denver on March 4, 1972, and after examining Mrs. Beard advised Bureau agents that she was not well enough to receive the subpoena and that Mrs. Beard would not be able to travel for a week or more.

Later on the evening of March 4, 1972, Mrs. Beard's physician advised that her condition would now permit service of the subpoena and the subpoena was served by a Special Agent at nine p.m., March 4, 1972.

Will you stand up, please, sir?

Hold your hand up, please. Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF DR. VICTOR L. LISZKA

Dr. LISZKA. I do.

The CHAIRMAN. You are Dr. Liszka?

Dr. LISZKA. That is right.

The CHAIRMAN. Give us your initials and where you practice medicine, Doctor?

Dr. LISZKA. I practice in Arlington and Washington, D.C.

The CHAIRMAN. Is Mrs. Dita Beard a patient of yours?

Dr. LISZKA. That is right; for a long time.

The CHAIRMAN. For how long?

Dr. LISZKA. For 9 years.

The CHAIRMAN. Have you seen her in the past few days?

Dr. LISZKA. I have seen her yesterday.

The CHAIRMAN. What was her condition at that time?

Dr. LISZKA. Well, she still had all of the symptoms and electrocardiographic signs of severe coronary heart disease and she was suffering, she was under sedation and proper coagulants to try to head off any infarction.

The CHAIRMAN. Do you have a statement which you signed and which other doctors in the hospital signed on March 5, 1972?

Dr. LISZKA. Yes, sir.

The CHAIRMAN. Will you read it, please?

Dr. LISZKA (reading):

To Whom it May Concern:

Mrs. Beard is suffering from impending coronary thrombosis due to acute coronary ischemia.

Additional stress could have precipitated the thrombosis with resultant permanent heart damage or death.

Dr. Liszka in making this clear in Washington was able to arrange the presentation of the subpoena with the assurance that the requirement of compliance will not be necessary, due to Mrs. Beard's condition.

This made the serving of the subpoena more of a benefit than a detriment to the patient's condition since it decreased the tension and strain of the impending service of this document to her.

The CHAIRMAN. That will be admitted into the record.

(The document referred to follows:)

ROCKY MOUNTAIN OSTEOPATHIC HOSPITAL,

Denver, Colo., March 5, 1972.

TO WHOM IT MAY CONCERN: Mrs. Beard is suffering from impending coronary thrombosis due to acute coronary ischemia.

Additional stress could have precipitated the thrombosis with resultant permanent heart damage or death.

Dr. Liszka in making this clear in Washington was able to arrange the presentation of the subpoena with the assurance that the requirement of compliance will not be necessary, due to Mrs. Beard's condition.

This made the serving of the subpoena more of a benefit than a detriment to the patient's condition since it decreased the tension and strain of the impending service of this document to her.

VICTOR L. LISZKA

DR. LEO RADETSKY

DR. DAVE T. GARLAND.

The CHAIRMAN. Now, state whether she is your patient; state whether or not you have permission from her to testify.

Dr. LISZKA. I am sorry, sir, I couldn't quite hear your question. Will you please repeat it?

The CHAIRMAN. State whether you have permission from Mrs. Beard to testify.

Dr. LISZKA. Yes, I do.

The CHAIRMAN. About her condition?

Dr. LISZKA. Yes, sir.

The CHAIRMAN. How long do you think she will be ill?

Dr. LISZKA. Well, you can only guess because this condition can get better and also it can get worse; but I would think she should be in the hospital for a period of 1 to 2 weeks if everything goes right.

The CHAIRMAN. Now, what do you think about her testifying before this committee?

Dr. LISZKA. Well, in her present condition that would be an extremely hazardous thing and I don't think she could possibly testify at this time.

The CHAIRMAN. Do you think she could testify better in her home?

Dr. LISZKA. Well, she would testify better in her home. The nature of her disease is such that it always responds to emotional or physical stress. Any emotional stress, nervous tension, would definitely bring back her symptoms and it will jeopardize her health.

The CHAIRMAN. Now you state that only yesterday she was having chest pains?

Dr. LISZKA. Yes, sir.

The CHAIRMAN. What about testimony in the hospital?

Dr. LISZKA. Well, I think that if you are trying to get an early testimony that would be the best place to get her testimony, in the hospital under a physician's supervision. I think that would be the earliest possible.

The CHAIRMAN. The physician would be present with her?

Dr. LISZKA. Yes, sir.

The CHAIRMAN. And could check her?

Dr. LISZKA. That is right; he could electronically monitor her heart.

Senator HART. Doctor, would you give us an outline of your qualifications, the school from which you have graduated and the disciplines that you have had?

Dr. LISZKA. I graduated in 1951 from the University of Budapest Medical School and then I had my residency in Budapest in the third clinic and then in 1957 I came to this country and first I worked for NIH in the Cardiac Department, then I had internship in residency in George Washington University Hospital and I went to Boston in the Baptist Hospital. I was resident and chief resident in cardiovascular surgery.

Senator HART. Are you what the layman would describe as a heart specialist?

Dr. LISZKA. Yes, I am a surgical heart specialist.

Senator HART. Based upon your examination of yesterday and your knowledge of the physical history of the patient, is it our understanding that if all goes well in the course of her recovery she would be released from the hospital within 2 weeks?

Dr. LISZKA. I would expect that.

Senator HART. If it is the desire or need of the committee to obtain testimony prior to that time, it should be obtained under medical supervision at the hospital?

Dr. LISZKA. Yes.

Senator HART. How soon might that be permitted?

Dr. LISZKA. Well, it would depend on her progress. If her electrocardiogram is reasonable and she is not having any more chest pain, which are always threatening signs, I think that could be arranged may be in a week or so.

Senator HART. When was it that you saw your patient last?

Dr. LISZKA. Yesterday.

Senator HART. Had you seen her prior to that?

Dr. LISZKA. The day before yesterday.

Senator HART. The day before yesterday?

Dr. LISZKA. Yes; in the same hospital.

Senator HART. When had you seen her previously?

Dr. LISZKA. I have seen her—I cannot remember exact dates—before she went to New York.

Senator HART. Was it some time last week?

Dr. LISZKA. It was some time last week.

Senator HART. Subsequent to the public attention that was given to the memorandum that she was said to have written?

Dr. LISZKA. Yes.

Senator HART. What were the circumstances of that visit?

Dr. LISZKA. Well, she felt quite ill, she had shortness of breath and I checked her, but at the time she did not have any significant chest pains or secondary signs of impending cardiac problem.

She has had a heart condition for several years.

Senator HART. This would have been a visit, I take it, you paid her at her home?

Dr. LISZKA. That is right.

Senator HART. Before a trip to New York, you said?

Dr. LISZKA. Yes.

Senator HART. What was the nature of that trip, if you know?

Dr. LISZKA. Well, she just simply stated that she will talk to her company officials, that is all. She indicated it was going to be a strenuous trip.

Senator HART. When you saw her in the hospital, did she indicate that she had gone to New York and had talked to company officials?

Dr. LISZKA. Yes.

Senator HART. Did she make any further comment on the visit?

Senator COOK. Mr. Chairman, before we get into this too deeply I think the doctor ought to be aware of or at least the committee ought to be cognizant of the situation we find ourselves in under the doctrine of confidentiality of doctor and physician, particularly in the State of Virginia—I am not sure relative to the State of Colorado—but, at least, if he has permission or authority from his patient.

The CHAIRMAN. He has testified to that.

Senator COOK. Well, he testified as to her condition.

Senator HART. The condition is one thing. I am trying to find out what the business was.

Senator COOK. I wonder if he has authority to discuss that, and if he does, then that is all right. I have no objection to it, but I think he ought to be apprised of it because I don't think he wants to wake up one morning and have a big fat lawsuit filed against him.

Senator HART. Apprised of what?

Senator COOK. Of the confidentiality of the statute relative to a physician and his patient. You are asking him about conversations she may have had with people and that is within the framework if she talked to him when he was in fact treating her, whether this constituted a confidential matter or whether it does not.

Senator HART. We may or may not get to that. If we get the substance of what was said, I am making an inquiry and the doctor may or may not reply, and I hope he does.

Dr. LISZKA. I never asked her permission to reveal anything about anything else she said, so I really don't know. My position, what it

should be, she did not tell me much about the meeting anyway. I don't think there would be any substantial information.

Senator HART. I don't know about the Virginia statute and I am pretty dull on the Michigan statute, but I thought the privilege did not go to nonmedical conversations. We have learned something.

Thank you, Mr. Chairman.

Senator KENNEDY. Doctor, could you tell me what your occupation was in Hungary?

Dr. LISZKA. I was a chest physician.

Senator KENNEDY. And did you have any connection with I.T. & T. interests in Hungary?

Dr. LISZKA. No, sir. I didn't even know there was any I.T. & T.

Senator KENNEDY. And you didn't have any feeling about Hungary's expropriation of I.T. & T. properties?

Dr. LISZKA. I wasn't aware there was such a thing.

Senator KENNEDY. Could you tell us how long Dita Beard has been a patient of yours?

Dr. LISZKA. About 9 years.

Senator KENNEDY. And do you remember how she first became a patient of yours?

Dr. LISZKA. Somebody referred her.

Senator HRUSKA. Would the Senator yield?

Dr. LISZKA. I cannot remember.

Senator HRUSKA. It is my understanding, and I thought it was the general understanding regarding this appearance, that the doctor is authorized by his patient to testify relative to her condition. Now, he is here only for the purpose of testifying on that matter. We have had fishing expeditions before in this committee. I don't know that this is one. If the relatively limited scope of the testimony on this occasion is going to be expanded, I would suggest that we canvass the situation a little bit so that we will understand each other as to what can be or what should be covered in this testimony.

Senator KENNEDY. May I proceed now, Mr. Chairman?

Is it unusual to have a cardiac surgeon as a general family physician?

Dr. LISZKA. I am not the general family physician. I treated her for specific conditions. I have not treated her for general.

Senator KENNEDY. When you first started to treat her 9 years ago was it in relationship to her heart condition?

Dr. LISZKA. No, it was in relationship to her lung condition and cardiac pulmonary surgery is one specialty. I have treated her about her lung condition.

Senator KENNEDY. Have you treated any other members of her family?

Dr. LISZKA. Yes.

Senator KENNEDY. And who?

Dr. LISZKA. For surgical procedures.

Senator KENNEDY. For other heart conditions?

Dr. LISZKA. Related to heart, yes.

Senator KENNEDY. And what can you tell us as to your general conclusion as to her physical and mental health other than her heart condition?

Dr. LISZKA. Well, recently it has been extremely poor.

Senator KENNEDY. Could you elaborate how recently—

Dr. LISZKA. Well—

Senator KENNEDY (continuing). That you made this determination?

Dr. LISZKA. I have met her under conditions when she was emotionally very disturbed, physically in poor shape, having signs of heart failure, and it is a combination of both physical and mentally poor condition.

Senator KENNEDY. Could you tell us over what period of time this is? Are you talking now of the last couple of weeks or months or recent years?

Dr. LISZKA. It is more than a month—several months. I would have to go back to my records exactly to know when was the first of such observation made.

Senator KENNEDY. But, as I understand, you have only treated her for her heart condition, is that right? Or did you treat her for the other conditions as well?

Dr. LISZKA. Heart and lung, vascular condition. I did not treat her for anything else.

Senator KENNEDY. Have you ever had any contact at all with I.T. & T., representatives of I.T. & T.?

Dr. LISZKA. No.

Senator HRUSKA. Mr. Chairman, if the Senator will yield, I would like to renew my suggestion that that inquiry has very little bearing, if any, upon the condition of Mrs. Dita Beard.

Senator KENNEDY. Can he answer the question?

Senator SCOTT. Unless the Senator is planning to impugn the testimony of the witness. He should state that if this is his purpose.

Senator KENNEDY. Could you tell us whether you have had any conversations with any people who work for I.T. & T.?

Dr. LISZKA. Regarding Mrs. Beard's condition?

Senator KENNEDY. Yes.

Dr. LISZKA. Yes, I have been asked about her condition, yes, sir.

Senator KENNEDY. By whom?

Dr. LISZKA. I talked to the company doctor.

Senator KENNEDY. What is his name?

Dr. LISZKA. Dr. Laver.

Senator KENNEDY. Has that been recently?

Dr. LISZKA. Yes, sir.

Senator KENNEDY. How recently?

Dr. LISZKA. Last week.

Senator KENNEDY. And could you tell us when was that, do you remember, last week?

Dr. LISZKA. I don't remember the day. I talked to him on the telephone. He is in New York and he is apparently taking care—

Senator KENNEDY. Excuse me.

Dr. LISZKA. He is in New York at the company headquarters.

Senator KENNEDY. Does he treat Mrs. Beard?

Dr. LISZKA. No, but I think he sort of keeps a tab on the high company officials. I have in the past contacted him and reported about her condition.

Senator KENNEDY. You have had conversations over the period that you have treated Mrs. Beard with this doctor: is that right?

Mr. LISZKA. Yes; he has checked periodically about her health, yes.

Senator KENNEDY. Did this conversation come at your initiative, or do you remember?

Dr. LISZKA. No; I was requested to talk to him and I called him on the telephone.

Senator KENNEDY. By whom?

Dr. LISZKA. By Mrs. Beard.

Senator KENNEDY. Mrs. Beard asked you to call?

Dr. LISZKA. To call the company doctor and give a report to him.

Senator KENNEDY. On her condition?

Dr. LISZKA. Yes, sir. I have to be requested by Mrs. Beard.

Senator KENNEDY. To make——

Dr. LISZKA. Legally to make such information available.

Senator KENNEDY. And this is during the time she was being treated by you; is that right?

Dr. LISZKA. That is right.

Senator KENNEDY. Did you know Mrs. Beard's whereabouts last week? Was she being treated by you during the course of the week?

Dr. LISZKA. Until she left for New York, yes.

Senator KENNEDY. That was when again? I know you mentioned it earlier but I can't remember.

Dr. LISZKA. I am sorry——

Senator KENNEDY. Could you tell us when this was?

Dr. LISZKA. I do not remember exactly the date.

Senator KENNEDY. Well, just approximately, the early part of the week sometime?

Dr. LISZKA. The early part of the week. Then she left for New York and I haven't heard until I have seen her in Denver.

Senator KENNEDY. And then what was the next occasion after she left for New York, then you saw her when?

Dr. LISZKA. Day before yesterday.

Senator KENNEDY. How did that come about, did she call you or——

Dr. LISZKA. No; she apparently had a close family friend in Denver who called me and said that she is in very poor condition and almost unconscious and I advised him to call his own personal physician and check Mrs. Beard and apparently he did so and he put her in the hospital.

Senator KENNEDY. She told you that she was going to New York, did she?

Dr. LISZKA. She told me that, yes.

Senator KENNEDY. And did she tell you that she was going to visit ITT in New York?

Dr. LISZKA. That is right.

Senator KENNEDY. And have you talked to her about that conversation or when she came back?

Dr. LISZKA. She didn't come back here.

Senator KENNEDY. When you went to visit her, the first time you saw her, which was, I gather, 2 days ago?

Dr. LISZKA. No, she did not. I did not talk to her about anything else.

Senator KENNEDY. She was too ill, was she?

Dr. LISZKA. I am sorry——

Senator KENNEDY. Was she too ill to talk to you about——

Dr. LISZKA. She was under sedation and very upset.

Senator KENNEDY. And she didn't tell you anything about her visit to ITT?

Dr. LISZKA. No, sir; just the fact she was there.

Senator KENNEDY. Have any officials of the Justice Department contacted you at all?

Dr. LISZKA. No.

Senator KENNEDY. You haven't talked to anybody representing the Justice Department?

Dr. LISZKA. Yes, I did.

Senator KENNEDY. Could you tell us who and when?

Dr. LISZKA. I talked to Mr. Wood.

Senator KENNEDY. Who is he, do you know?

Dr. LISZKA. I don't know his exact title. He is Associate Deputy—

Senator KENNEDY. Pardon?

Dr. LISZKA. Associate Deputy Attorney General, I think.

Senator KENNEDY. Associate Deputy Attorney General.

When was that?

Dr. LISZKA. I talked to him yesterday.

Senator KENNEDY. Excuse me?

Dr. LISZKA. I talked to him yesterday.

Senator KENNEDY. Can you tell us about that conversation?

Senator HRUSKA. Mr. Chairman, I would like to have the Senator yield for the purpose of saying again that this is beyond the scope of the testimony that the physician came here to give. This is not the time to go into any matters that do not bear upon this subject, which is the physical condition of Mrs. Beard, who is under subpoena, and to explain why she is unable to comply with it now.

Senator KENNEDY. Well, you have said now that you had a conversation with Mr. Wood in the Justice Department; is that right?

Dr. LISZKA. Well, I don't know what my position is right now.

Senator KENNEDY. Is there any reason you would feel any restraint in just saying what Mr. Wood wanted to talk about?

Dr. LISZKA. Well, no, I don't have any particular reason.

Senator KENNEDY. Could you?

Dr. LISZKA. I don't know the rules and I don't want to offend any of them.

Senator KENNEDY. I don't know any you have offended so far.

Dr. LISZKA. I just talked to him about a meeting. I have been present with Mrs. Beard.

Senator KENNEDY. Where?

Dr. LISZKA. She called me and I visited her and talked about a meeting.

Senator KENNEDY. Well, has this been the only contact you have had with the Justice Department?

Dr. LISZKA. Well, you know, FBI agents came to my home because we have filled prescriptions for Mrs. Beard and they felt we might have some information as to where she might be.

Senator KENNEDY. This is when they were looking for Mrs. Beard?

Dr. LISZKA. Yes, sir.

Senator KENNEDY. Those are the only two times you have had any contact with the Justice Department?

Dr. LISZKA. Well, the FBI came twice and I talked to Mr. Wood twice.

Senator KENNEDY. Was there anyone with Mr. Wood when you saw him?

Dr. LISZKA. Yes.

Senator KENNEDY. Who was that?

Dr. LISZKA. He was introduced to me but I am very poor on names.

Senator KENNEDY. Finally, Doctor, you have known, I guess, and treated Mrs. Beard over a period of 9 years or so. Do you know from your own personal experience whether her illnesses in the past have ever kept her from working for ITT?

Dr. LISZKA. Well, yes; I have operated on her several times.

Senator KENNEDY. For other than operations?

Dr. LISZKA. I am sorry?

Senator KENNEDY. Other than operations?

Dr. LISZKA. She has been ill.

Senator KENNEDY. But she has kept working for ITT?

Dr. LISZKA. Yes; with some interruptions.

Senator KENNEDY. Were those interruptions involved in medical treatment that you were providing?

Dr. LISZKA. That is right. I have to periodically advise her.

Senator KENNEDY. You don't have to get into the particulars. But, as I understand from your response, your information, your comment here, your testimony, with the exception of those operations, other kinds of serious, I guess, medical treatment, it is your understanding that she has worked continuously for ITT for a number of years?

Dr. LISZKA. That is right.

Senator KENNEDY. Thank you very much, Doctor.

Senator BURDICK. Doctor, I think you testified you saw Mrs. Beard the first of last week before she went to New York?

Dr. LISZKA. That is right.

Senator BURDICK. At that time, you testified, she had a flutter or something, she was nervous, showed some symptoms of being ill at that time?

Dr. LISZKA. Well, you know, she had symptoms of strain, physical and mental.

Senator BURDICK. You felt it was all right for her to go to New York in that condition?

Dr. LISZKA. I didn't advise her to go to New York; she went anyway.

Senator BURDICK. Would you have advised her to go if she had asked you?

Dr. LISZKA. No. If she asked me. I told her not to go but she went anyway.

Senator BURDICK. You had no idea she was going to Denver?

Senator BURDICK. Apparently from New York she went to Denver?

Dr. LISZKA. That is what I understand.

Senator BURDICK. Sometime between the time you saw her and March 4?

Dr. LISZKA. That is right.

Senator BURDICK. Was it on March 4?

Dr. LISZKA. I don't know.

Senator BURDICK. Isn't it a fact that travel itself is hard upon a party who has heart trouble?

Dr. LISZKA. Yes, it can be, particularly if the airplane is poorly pressurized.

Senator BURDICK. Isn't it a fact that increased elevation such as going from a low elevation area of the sea coast to a mile high city like Denver is also hard on a heart patient?

Dr. LISZKA. Definitely.

Senator BURDICK. So knowing this you would have never advised her to go to Denver at that time?

Dr. LISZKA. No. I did not advise her even to go to New York.

Senator BURDICK. But your testimony is that now within a week or two she will be able to testify?

Dr. LISZKA. I would expect barring anything unforeseen.

Senator BURDICK. That is all.

(Senator Hart presiding.)

Senator HART. Senator Hruska.

Senator HRUSKA. Doctor, would you be able to tell more clearly and with greater assurance about her ability to respond to subpoena, say next week; could you tell us more clearly about that in 3 or 4 days?

Dr. LISZKA. Give me about a week.

Senator HRUSKA. By the end of the week?

Dr. LISZKA. Yes.

Senator HRUSKA. By that time you will have more electrocardiograms, I presume, and further reports from the physicians who are attending her?

Dr. LISZKA. Yes, sir; and we can see the pattern of evolution one way or the other.

Senator HRUSKA. Who are the other two physicians who signed this report of March 5?

Dr. LISZKA. The cardiologist is Dr. Radetsky.

Senator HRUSKA. What is his specialty?

Dr. LISZKA. Cardiology.

Senator HRUSKA. He is a cardiologist?

Dr. LISZKA. Yes, he is a medical cardiologist.

Senator HRUSKA. Who is Dr. Dave T. Garland?

Dr. LISZKA. He is, I assume, a general practitioner.

Senator HRUSKA. And they are both in attendance in Colorado on Mrs. Beard?

Dr. LISZKA. That is right.

Senator HRUSKA. That is all I have right now.

The CHAIRMAN. Senator Fong.

Senator FONG. Doctor, I understand that the marshals were refrained from serving a subpoena on her for awhile; is that right?

Dr. LISZKA. Yes.

Senator FONG. Subsequently that subpoena was served?

Dr. LISZKA. Yes.

Senator FONG. Who made the decision to serve it?

Dr. LISZKA. I did.

Senator FONG. You and you alone?

Dr. LISZKA. Yes.

Senator FONG. Then you and you alone will decide as to when she will be able to testify; is that correct?

Dr. LISZKA. Well—

Senator FONG. Or will you be consulting the other two doctors?

Dr. LISZKA. No.

Senator FONG. I want to find out whom do we see when we decide we want to take her testimony. Who is going to make the decision?

Dr. LISZKA. It is primarily Mrs. Beard's decision who speaks for her condition.

Senator FONG. Will you have to consult her as to whether she will be willing to come here to testify?

Dr. LISZKA. I cannot discharge her from the hospital; only the doctors who are in attendance can discharge her or can write any orders on the chart. I am not licensed to practice in the State of Colorado and I have no privileges in that particular hospital. So my function is strictly an advisory one.

Senator FONG. When the decision was made that she should receive the subpoena upon condition that she is not to respond to it until she is able to do so, that decision was made by you after consulting with her?

Dr. LISZKA. Yes, sir. The doctors have authorized me to make that decision, if you feel like she should be able to receive something that will be all right with them.

Senator FONG. Did the other two doctors take part in that decision?

Dr. LISZKA. No; they authorized me to make the decision.

Senator FONG. The other two doctors authorized you to decide whether she was physically fit to be served with the subpoena?

Dr. LISZKA. That is right.

Senator FONG. Did you talk to her before you made that decision?

Dr. LISZKA. Yes, I sure did.

Senator FONG. And she consented to that?

Dr. LISZKA. Yes. The main stress in serving the subpoena is the fact that you expect her to comply with it. If you are physically and mentally in very poor state this appears to be an unsurmountable task to perform, but based on Mr. Holloman's word I assured her she does not have to appear, so that serving the subpoena was really not a meaningful fact.

Senator FONG. You felt serving the subpoena with the understanding that she would not have to respond to it until she was ready, would ease the problem on her?

Dr. LISZKA. That is right.

Senator FONG. Now, the decision then, should this committee decide that it would like to have her testify, say, in a hospital, with some member or members going to Denver to get her testimony, who will have to make that decision as to when she could be seen?

Dr. LISZKA. Well, I would expect that it would be a joint decision.

Senator FONG. You would have to make a decision?

Dr. LISZKA. No; a joint decision with the other two doctors. All three of us.

Senator FONG. And you will have to talk to her to see whether she will consent?

Dr. LISZKA. I am sure if she thinks she is in condition she would consent. She expressed her willingness to testify as soon as she is able to.

Senator FONG. So then the decision will be a medical decision by you and the other two doctors?

Dr. LISZKA. That is right.

Senator FONG. As to when she will be ready to testify?

Dr. LISZKA. That is right.

Senator FONG. Thank you.

Senator SCOTT. Doctor, you testified that her condition is due to acute coronary ischemia. Would you tell us for the record what the coronary ischemia is?

Dr. LISZKA. Every functioning tissue in the body needs a certain amount of blood supply, the heart functioning at all times needs at every level of function a certain amount of blood flowing through the blood tissues. Ischemia means the blood flow is not adequate, is less than what is required at the functional state at the present time.

Senator SCOTT. I see. Thank you very much.

Senator THURMOND. Doctor, as I understand, the effect of your testimony here today is, No. 1, that Mrs. Beard is not able at this time to come and testify?

Dr. LISZKA. That is right.

Senator THURMOND. No. 2, that if and when she is able you will so testify and inform the committee; is that correct?

Dr. LISZKA. That is right.

Senator THURMOND. That is all; thank you, Mr. Chairman.

Senator COOK. Dr. Liszka, were you advised when you arrived in Denver that it was necessary to give Mrs. Beard oxygen on the flight out to Denver?

Dr. LISZKA. It was reported to me that when she was flying to Denver apparently she suffered acute shortness of breath and the attendants on the airplane had to administer oxygen.

Senator COOK. And that she was taken from there to the hospital in Denver?

Dr. LISZKA. No; she was taken somewhere in Denver. Apparently the oxygen temporarily alleviated her problem.

Senator COOK. Would the oxygen temporarily alleviate the problem?

Dr. LISZKA. Yes, it could. And apparently staying in Denver has made her condition—or by natural causes—her disease become more severe.

Senator COOK. I notice you and the other two doctors said in your letter to the committee "This made the serving of the subpoena more of a benefit than a detriment to the patient's condition since it decreased the tension and strain of the impending service of this document to her."

In other words that caused no real serious problems in the service.

Dr. LISZKA. No, she had to me an unreasonable fear that there are two people outside her door waiting 24 hours and that added to her mental strain for some reason and she preferred to be served rather than somebody sitting outside of her door.

Senator COOK. Then she wasn't attempting to avoid the service.

Dr. LISZKA. No.

Senator COOK. Thank you, Mr. Chairman.

Senator MATHIAS. No questions. I think the doctor has been very helpful to the committee and we appreciate your being here.

Dr. LISZKA. Thank you.

Senator GURNEY. Doctor, I don't think I understand why it was that you went to Denver. Was this a result of a phone call from Mrs. Beard?

Dr. LISZKA. It was a request from her family.

Senator GURNEY. Did she tell you when you talked to her and examined her in Denver why she went to Denver from New York?

Dr. LISZKA. No.

Senator GURNEY. You mentioned in your testimony, I think, that, as you put it, she tended to be disturbed and irrational at times. Was that your testimony?

Dr. LISZKA. Yes.

Senator GURNEY. What do you mean by that, Doctor?

Dr. LISZKA. Well, "disturbed" means that your thought processes are not well coordinated, the sentences may be not in a logical order, the actions are not in a logical fashion, and that is what I mean by "disturbed."

Senator GURNEY. And this description of Mrs. Beard, disturbed, irrational, is over and above her coronary difficulties; is that correct?

Dr. LISZKA. Well, it could be caused by the coronary because if your heart is not pumping blood throughout your body that makes the brain suffer from inadequate blood flow as well, so your brain does not function properly.

Senator GURNEY. How long would you say this condition had existed in Mrs. Beard?

Dr. LISZKA. The heart condition?

Senator GURNEY. No, the disturbed rational condition.

Dr. LISZKA. It is periodical. It is not something she experienced at all times.

Senator GURNEY. During the 9 years that she has been your patient?

Dr. LISZKA. Yes; but mainly in the last 4 years, I would say, 3 or 4 years. I am guessing. More than one, yes.

Senator GURNEY. Could you give us any concrete examples to illustrate this description of her condition?

Dr. LISZKA. Well, that is obvious to an observer. I mean I have been a doctor now for 21 years. There are certain things you can realize without being documented. It is obvious, it is an obvious behavior pattern.

Senator GURNEY. But it was obvious to you that at times her conduct would perhaps not be what you would describe as normal—

Dr. LISZKA. That is right.

Senator GURNEY (continuing). Conduct of a normal person?

Dr. LISZKA. That is right.

Senator GURNEY. That is all, Mr. Chairman.

The CHAIRMAN. I want to ask you this question. I know it is going to be objected to. Did Mrs. Beard ever tell you anything about meeting Attorney General John Mitchell at the Governor's mansion?

Dr. LISZKA. Yes.

The CHAIRMAN. In Kentucky?

Dr. LISZKA. Yes, she has.

Senator HRUSKA. Mr. Chairman.

The CHAIRMAN. You are overruled.

[Laughter.]

Senator HRUSKA. This Senator just wanted to make the same comment about the scope of the examination that he respectfully did earlier in the day.

The CHAIRMAN. You are overruled.

Senator COOK. Before you ask, and I am not going to object, and I don't really want to object to what Phil started to do, I want to put the Virginia statute in the record so this witness can be aware of his rights.

The CHAIRMAN. Put it in.

(The document referred to follows:)

Sec. 8-289.1. Communications between physicians and patients. Except at the request of, or with the consent of, the patient, no duly licensed practitioner of any branch of the healing arts shall be required to testify in any civil action, suit, or proceeding at law or in equity respecting any information which he may have acquired in attending, examining, or treating the patient in a professional capacity if such information was necessary to enable him to furnish professional care to the patient; provided, however, that when the physical or mental condition of the patient is at issue in such action, suit, or proceeding or when a judge of a court of record, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination, or treatment shall be privileged and disclosure may be required. This section shall not be construed to repeal or otherwise affect the provisions of section 65-68 relating to privileged communications between physicians and surgeons and employees under the Workmen's Compensation Act; nor shall the provisions of this section apply to information communicated to any such practitioner in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug. A clinical psychologist duly licensed under the provisions of section 54-309.1 shall be considered a practitioner of a branch of the healing arts within the meaning of the section.

Senator COOK. And whatever he wishes to answer that is perfectly all right.

The CHAIRMAN. Do you wish to answer that question?

Dr. LISZKA. Well, sir, I really don't want to break any rule or law. I have to ask someone's advise whether I should or shouldn't but I do think, you know—let me read it.

Senator COOK. While he is reading that, obviously if Mrs. Beard gives him permission to testify as to this he can testify as to anything he wants to. The only point of it is does he or does he not have this and can he obtain it, and if he obtains it, let him testify.

The CHAIRMAN. I don't think it applies. Of course, if it is a medical question it would apply, but something else I don't think it does apply.

Senator COOK. There has probably been a lot of lawsuits on that but I don't want this man to get sued, that is all. I like the comment from the press table, they like to be protected in their sources better than anybody in the world, Mr. Chairman.

(The document was handed to the witness for his inspection.)

Senator COOK. I requested this information from Senator Spong this morning

Dr. LISZKA. Well, it is my feeling. I did talk to Mrs. Beard and she did not restrict me in any fashion or imply any restriction as to what I may say or may not, neither did she positively authorize me to talk about it. But it would be my understanding that probably she wouldn't mind if I answered a question.

The CHAIRMAN. It is your understanding what?

Dr. LISZKA. That she wouldn't mind if I answered a question.

The CHAIRMAN. All right.

Senator KENNEDY. Can we find out whether she does or does not object to it?

The CHAIRMAN. He says she wouldn't mind it.

Just answer the question.

Dr. LISZKA. Well, yes, she did tell me about the meeting.

The CHAIRMAN. What did she say?

Dr. LISZKA. Well, she called me and said, "I need your help because I am in very poor condition." Then she explained why she was in poor

condition. She said because I met the Attorney General at the Kentucky Derby and I had a dressing down by the Attorney General such as I have never received in my life. Apparently the Attorney General gave her a lecture.

The CHAIRMAN. What was the advise he gave her?

Dr. LISZKA. Well, she told me, "I tried to talk to the Attorney General about a merger and antitrust matters and he told me that I should proceed through proper channels," and apparently the rest of it was a great big lecture that shook her up.

Senator SCOTT. Great what?

Dr. LISZKA. Lecture. She did not go into detail about the lecture.

Senator SCOTT. May I ask a question?

The CHAIRMAN. Sure.

Senator SCOTT. In other words, the Attorney General made it clear to Mrs. Beard, according to your understanding, that her comments to the Attorney General were improper, or at least the Attorney General regarded them as improper?

Dr. LISZKA. According to Mrs. Beard the Attorney General did not want to engage in a discussion with her. Her attempt apparently failed.

Senator SCOTT. Her attempt failed?

Dr. LISZKA. Yes.

Senator FONG. Did she say how long that took?

Dr. LISZKA. I don't remember her saying. She may have said it and I have forgotten, but I don't remember any specific time.

Senator FONG. Did she say that they discussed anything else?

Dr. LISZKA. No; she only referred to that, with the Attorney General, I mean.

Senator FONG. She referred to the I.T. & T. case?

Dr. LISZKA. Yes.

Senator FONG. And she got a dressing down?

Dr. LISZKA. Yes. She said that was such a dressing down she never had in her life.

Senator FONG. She never had such a dressing down in her life?

Dr. LISZKA. No; she said that was the worst she ever had.

Senator FONG. That means she was really scolded?

Dr. LISZKA. That is right.

Senator HART. How much scolding did you give her when she told you she had to make a trip to New York and she was in bad condition and you didn't want her to go?

Dr. LISZKA. Well, I don't scold people, I just tell them my reasons why and try to explain it to them and make an intellectual understanding possibly instead of an emotional type and they can make their own decisions.

Senator HART. Notwithstanding your very calm professional explanation to her as to why she shouldn't go to New York, what did she say?

Dr. LISZKA. Well, she said, "I just have to go."

Senator HART. Why? Did you ask?

Dr. LISZKA. Well, apparently—she did not explain it—she probably was requested to go by her company, and I am assuming that.

Senator HART. Is that the explanation she gave you?

Dr. LISZKA. No; she did not really explain it.

Senator HART. You told us that she told you it would be a difficult meeting, a difficult trip. There must have been some explanation.

Dr. LISZKA. She did not explain whether it was on her initiative or the company's initiative.

Senator HART. What was that?

Dr. LISZKA. She did not tell me whether she wanted to talk to the company or the company wanted to talk to her. That was not made clear who proposed the trip. She just said that she has to go.

Senator HART. With no explanation as to why, notwithstanding your professional counsel to her that she should not, that it was essential that she go?

Dr. LISZKA. She went anyway; yes.

Senator HART. But all she said was she had to?

Dr. LISZKA. She had to; yes.

Senator HART. That is all.

Senator KENNEDY. Doctor, from what you have said here, then, you confirm that she said she met with Mitchell at the Governor's mansion in Kentucky during a dinner reception given by Republican Gov. Louis Nunn last May after the Kentucky Derby; is that correct?

Dr. LISZKA. Well, I don't remember whether she ever stated to me where exactly the meeting took place, whether it was the Governor's mansion or some other place.

Senator KENNEDY. It confirms she was in Kentucky?

Dr. LISZKA. In Kentucky at the time of the Kentucky Derby.

Senator KENNEDY. At the time of the Kentucky Derby?

Dr. LISZKA. Yes.

Senator KENNEDY. And then at the Governor's reception she said Mitchell took her and Nunn aside and to her astonishment and shock launched into an hour-long diatribe against her. That would certainly seem consistent with what you said this morning?

Dr. LISZKA. Yes.

Senator KENNEDY. And he criticized her for putting pressure through Congress, the Justice Department and White House on the antitrust cases?

Dr. LISZKA. You know she did not express it to me that way. She said "He just gave me a——"

Senator KENNEDY. Isn't that a fair representation of what you have said?

Dr. LISZKA. That would be my impression, yes.

Senator KENNEDY. Those are all of the facts that she said to you, as I understand it?

Dr. LISZKA. Yes.

Senator KENNEDY. During your conversation?

Dr. LISZKA. She did not go into any detail and I am not familiar with this business.

Senator KENNEDY. Those facts are all in Mr. Anderson's column, as I just read them there.

You have indicated that you have kept the doctor at I.T. & T. informed generally as to Mrs. Beard's condition over a period of recent years; have you?

Dr. LISZKA. That is right.

Senator KENNEDY. So they have been very much aware about her physical as well as her mental condition?

Dr. LISZKA. Well, apparently all the top officials have to have general medical control and she according to the company rules should have gone to New York for that, however, she did not wish to go so

I had an internist see her here and myself together took care of her and periodically sent a report, a verbal report, it wasn't a written report. Maybe I have sent some written reports but basically telephone calls.

Senator KENNEDY. And so the I.T. & T. doctor, as far as you are concerned, understood and was familiar with the medical history and the medical condition of Mrs. Beard, was he not, as far as you knew about it?

Dr. LISZKA. Well except in the last year. The I.T. & T. doctor himself had a heart attack, he was out of work for a long period of time.

Senator KENNEDY. But there is a record system, is there not, and you have kept your contact in I.T. & T. informed fully as to the information on her condition?

Dr. LISZKA. Well, it wasn't a regular medical, it was periodically Mrs. Beard requested please would you call Dr. Laver or he called me and, you know, we had a conversation about her health.

Senator KENNEDY. Do you think there is any part of her condition that they were not aware of that you know about?

Dr. LISZKA. Well, you know, they concentrated on her lung condition and circulatory condition. We never discussed her mental state.

Senator KENNEDY. You never made any comments about that?

Dr. LISZKA. No.

The CHAIRMAN. What about her mental state? Excuse me.

Senator KENNEDY. Could I hear and then I will yield to the chairman.

As you have said, that is not your field; is that right?

Dr. LISZKA. I said it would not be my duty to discuss unless they asked me.

Senator KENNEDY. Well, how much training have you had in mental illness?

Dr. LISZKA. Well, she is not mentally ill.

Senator KENNEDY. She is not? Well —

Dr. LISZKA. Mental illness is different from being disturbed or having secondary effect on the brain of a poor circulation.

Now, supposedly if someone has a problem with their heart and the brain is not properly profused that person could appear mentally ill but it is not, really, not mentally ill, it is just a symptom.

Senator KENNEDY. The Chairman asked a question.

The CHAIRMAN. What about her mental illness?

Dr. LISZKA. Well, my opinion is that her problems are related to her poor circulation and her excess of —

The CHAIRMAN. What about tranquilizers?

Dr. LISZKA. Tranquilizers, you know, in themselves do not make you disturbed or affect your brain function unless you take it in excessive doses.

The CHAIRMAN. What about tranquilizers and alcohol?

Dr. LISZKA. That is a bad combination.

The CHAIRMAN. Well, was that combination present here?

Dr. LISZKA. Yes, sir.

Senator KENNEDY. You never reported that to the ITT doctor?

Dr. LISZKA. Well, I don't remember whether I did or not. I am sure we had discussed her problem of excessive drinking.

Senator KENNEDY. With the ITT doctor?

Dr. LISZKA. Yes.

Senator KENNEDY. And he was aware of that, was he?

Dr. LISZKA. Yes.

Senator KENNEDY. Was she aware that you were discussing it with the ITT doctor?

Dr. LISZKA. Well, I don't think she kept any secret about she likes to have it.

Senator KENNEDY. So the ITT doctor, as far as you are concerned, in conversations with him, had an understanding of her condition?

Dr. LISZKA. Well, they knew her, I am sure, quite well. You don't try to, you know, emphasize the negative sides necessarily.

Senator KENNEDY. Well, you emphasized the medical side.

Dr. LISZKA. This is my duty.

Senator KENNEDY. And you weren't trying to withhold any of the medical points?

Dr. LISZKA. No, I did not.

Senator KENNEDY. Can you tell me whether you discussed the mental aspect of Mrs. Beard with anyone in the Justice Department?

Dr. LISZKA. Well, this came up, you know.

Senator KENNEDY. What do you mean "it came up?"

Dr. LISZKA. Whether she has had problems with drugs, I mean tranquilizers and alcohol.

Senator KENNEDY. How did it come up with the representatives of the Justice Department; whom did it come up with?

Dr. LISZKA. I am sorry—

Senator KENNEDY. How did it come up, whom did you talk about these matters with in the Justice Department?

Dr. LISZKA. Mr. Wood.

Senator KENNEDY. When did you talk to him about those problems?

Dr. LISZKA. I talked to him yesterday.

Senator KENNEDY. And what was the conversation?

Dr. LISZKA. Well, pretty much similar to your question, whether was she always at full capacity mentally or having periods when she might not have been.

Senator KENNEDY. This was the first and the only time that you talked to Mr. Wood?

Dr. LISZKA. I talked to him twice.

Senator KENNEDY. When was the other time?

Dr. LISZKA. I think it was this past Friday.

Senator KENNEDY. Last Friday?

Dr. LISZKA. Yes.

Senator KENNEDY. In person or on the telephone?

Dr. LISZKA. In person.

Senator KENNEDY. Where was that?

Dr. LISZKA. In the Justice Department.

Senator KENNEDY. In his office?

Dr. LISZKA. In his office.

Senator KENNEDY. Was there anybody else present then?

Dr. LISZKA. Yes.

Senator KENNEDY. Do you remember who?

Dr. LISZKA. I remember. I don't remember his name.

Senator KENNEDY. Do you remember the office he held? Can you tell us anything about that?

Dr. LISZKA. It was his office.

Senator KENNEDY. Mr. Wood and you met in this gentleman's office?

Dr. LISZKA. No; I met in Mr. Wood's office.

Senator KENNEDY. There is nothing else you can tell us about the other fellow who was in the office?

Dr. LISZKA. Apparently he is an administrative assistant, or something. I am not sure.

Senator KENNEDY. Did you talk about the medical condition of Mrs. Beard there, too?

Dr. LISZKA. Yes.

Senator KENNEDY. How were the conversations different? Why did you talk? Wouldn't you have finished the conversation last week?

Dr. LISZKA. It was a much shorter conversation. We didn't go into any——

Senator KENNEDY. Last week?

Dr. LISZKA. Yes; the whole conversation maybe, I would say, half an hour.

Senator KENNEDY. Did they ask you about the Kentucky incident?

Dr. LISZKA. Yes; they did.

Senator KENNEDY. The Justice Department did?

Dr. LISZKA. Yes.

Senator KENNEDY. What did you tell them?

Dr. LISZKA. Exactly the same thing.

Senator KENNEDY. You assumed the permission of Mrs. Beard to talk to them about that?

Dr. LISZKA. I am sorry——

Senator KENNEDY. You assumed you had Mrs. Beard's permission to discuss that incident with the Justice Department?

Dr. LISZKA. Yes; she told me before, she authorized me to give information about it.

Senator KENNEDY. To the Justice Department?

Dr. LISZKA. Well, not specifically to the Justice—if it is needed to be given.

Senator KENNEDY. Have you seen her since the publication of her memo?

Dr. LISZKA. Yes.

Senator KENNEDY. Could you tell us when?

Dr. LISZKA. I think it was Tuesday before she went to New York.

Senator KENNEDY. And did she deny to you she had written it?

Dr. LISZKA. Well, no, she didn't deny it. She denied that she—it was my impression that she accepted it that was her memo.

Senator KENNEDY. She what?

Dr. LISZKA. She received it as her memo.

Senator KENNEDY. Did she say so to you?

Dr. LISZKA. She didn't say so but she acted that way.

Senator KENNEDY. Did she say anything about writing it or——

Dr. LISZKA. Well, it was typed and I don't think she types. She must have dictated it.

The CHAIRMAN. Repeat that; I couldn't understand you.

Dr. LISZKA. It was typed and I don't think she personally types. It must have been dictated. This is an assumption. She did not go into any detail.

The CHAIRMAN. Did she say whether or not she was intoxicated when she wrote that?

Dr. LISZKA. She said she was just mad. She could have been because, you know, but she said I was mad and disturbed when I wrote it, she said. She stated that she didn't mean to imply things which seem to be implied in the memo.

Senator KENNEDY. How did she say she was angry?

Dr. LISZKA. She said "I was mad."

Senator KENNEDY. At whom?

Dr. LISZKA. She said I very seldom write memos and I don't want to write memos, I was mad to write one.

Senator KENNEDY. Was she mad it had gotten out, was she?

Dr. LISZKA. No, no; she did not refer to that. She was mad at the fact that she had to write the memo.

Senator KENNEDY. Did she know how it had gotten out?

Dr. LISZKA. No.

Senator KENNEDY. She had no idea?

Dr. LISZKA. Well, she theorized.

Senator KENNEDY. What did she tell you about that?

Dr. LISZKA. Well, she said that maybe who the memo was addressed to did not destroy it.

Senator KENNEDY. The fellow she sent it to didn't destroy it?

Dr. LISZKA. Yes; and gave it to someone.

Senator KENNEDY. Was she mad because the fellow hadn't destroyed it, do you think? Is that part of the reason for being mad?

Dr. LISZKA. Well, I don't think—she is more upset about the fact that the memo, she didn't mean to say whatever the memo appeared to say. She conveyed to me that thought that she—

Senator KENNEDY. Did she tell you what part she meant to say?

Dr. LISZKA. Yes: she said that there was no, definitely stated there was no connection between the convention and the settlement and I never wanted to say that because there was none.

Senator SCOTT. Let us hear that again.

Dr. LISZKA. There was no connection between the convention going to San Diego and—

Senator SCOTT. She said definitely there was no—

The CHAIRMAN. Give him time.

Dr. LISZKA. No connection.

Senator KENNEDY. What about that fishing expedition now, Senator?

Senator SCOTT. May I be heard?

Senator GURNEY. The fish are getting better on this side all the time.

Senator SCOTT. May I be heard? Because what I have been anxious to bring out, most of the testimony here or a great deal of it would never have been admissible in a court of law and I think this record should show it; but we are all engaging in this and the doctor should be advised of it.

I would like the doctor to make it very clear again she had said to him there was no connection between the San Diego convention and the ITT merger.

Dr. LISZKA. That is right.

Senator SCOTT. That is right. Thank you.

Go ahead with your fishing, Senator.

The CHAIRMAN. Who was present when she told you that? Was anyone present?

Dr. LISZKA. I am sorry; I couldn't hear you, Senator.

The CHAIRMAN. Was anyone present when she made that statement there was no connection?

Dr. LISZKA. Yes; Mr. Hume.

The CHAIRMAN. Who?

Dr. LISZKA. Mr. Hume.

Senator HRUSKA. Who is he?

The CHAIRMAN. Who is Mr. Hume?

Dr. LISZKA. Mr. Anderson's reporter.

Senator KENNEDY. He was present when?

Dr. LISZKA. At the conversation?

Senator KENNEDY. All during this conversation?

Dr. LISZKA. Yes.

Senator KENNEDY. And you were present?

Dr. LISZKA. Yes.

Senator KENNEDY. Where did that conversation take place?

Dr. LISZKA. In her home.

Senator KENNEDY. And how did you happen to be there?

Dr. LISZKA. She called me that she was feeling ill and would I come over.

Senator KENNEDY. What was her condition at that time?

Dr. LISZKA. I never seen her mentally in a worse condition.

Senator KENNEDY. You mean when she told you that there was no connection between the contribution and San Diego?

Dr. LISZKA. She definitely stated that.

Senator KENNEDY. What was her condition then?

Dr. LISZKA. She was in poor condition.

Senator KENNEDY. At any time did she tell you that the memorandum was not hers?

Dr. LISZKA. Well, she didn't say that. She said, "I do not remember writing the memorandum as such. She said "I have a mental block or"——

Senator KENNEDY. I am sorry?

Dr. LISZKA. I have a mental block to recall at that time when I wrote the memo, so I just assumed that it was hers. But she could not remember writing it as such.

Senator KENNEDY. But she never told you, "I didn't write that memo"?

Dr. LISZKA. Not in those words, no.

Senator KENNEDY. As I understand from what you have said, she just said some parts of it represented her understanding?

Dr. LISZKA. She made it clear that she never wanted to imply or even suggest that there is any connection between the settlement and the convention.

Senator KENNEDY. And this conversation was not just to you but in the presence of a newspaper reporter; is that right?

Dr. LISZKA. What I am conveying to you, she has talked to me privately just as well as at that time.

Senator KENNEDY. But this one, the conversation that you are relating, was in the presence of Mr. Hume; is that right?

Dr. LISZKA. I was present at that conversation and she made it clear to Mr. Hume there was no connection between the two.

Senator KENNEDY. Now, in this, as I understand, in Mr. Anderson's column, it says:

Mrs. Beard insisted the subject of the GOP Convention never came up with Mitchell and never was a factor in the anti-trust matter. But this clearly contradicts her memorandum, which was written about six weeks after the Kentucky Derby dinner.

That is as I understand Mr. Anderson, and that is just about what you have told us here, is it not?

Dr. LISZKA. Yes, sir.

Senator KENNEDY. Finally, did you have any conversation with Mrs. Beard about what the ITT people told her to do or not to do after she left New York?

Dr. LISZKA. No.

Senator KENNEDY. Did she say why she went out to Denver?

Dr. LISZKA. No, she did not explain it to me.

Senator KENNEDY. And she didn't tell you whom she saw when she was in New York?

Dr. LISZKA. No; well, she called me from New York when she was there and asked me to talk to the company physician and she said that "I am in Mr. Gerrity's office."

Senator KENNEDY. Mr. Gerrity's office?

Dr. LISZKA. Mr. Gerrity's office. That is all she said. Whether that means she was talking to Mr. Gerrity or not, I don't know. She just indicated that is where the telephone call was made from.

Senator KENNEDY. Did she mention the name of Mr. Geneen during any of those conversations?

Dr. LISZKA. Yes.

Senator KENNEDY. What did she say about him?

Dr. LISZKA. Well, Mr. Hume asked Mrs. Beard whether Mr. Geneen had known anything about—whether this approach of the Attorney General—I think I remember correctly. You know, don't forget, I am not an ITT man and I am not familiar with their business. If I remember correctly, that is what happened. Mr. Hume asked her what did Mr. Geneen know about San Diego and the fact that you approached the Attorney General, and she said no.

Senator KENNEDY. Now did she mention Mr. Geneen in her conversation from Mr. Gerrity's office?

Dr. LISZKA. No; she just simply stated "I am in Mr. Gerrity's office," and you know, they can find me there. She did not indicate whether or not she had any conversation with him.

Senator KENNEDY. Was there any way you can tell us about her condition when she talked to you from Mr. Gerrity's office?

Dr. LISZKA. Well, it was a very short conversation. She merely asked me to call Dr. Laver.

The CHAIRMAN. Let him finish.

Senator KENNEDY. She said to call whom?

Dr. LISZKA. Dr. Laver, the company physician, and tell him what I know about her health at the present time.

Senator KENNEDY. That was the only part of the conversation?

Dr. LISZKA. Yes; and she said I am in Mr. Gerrity's office.

Senator KENNEDY. Did you ask her about her condition?

Dr. LISKA. I asked her how she was feeling.

Senator KENNEDY. What did she say?

Dr. LISZKA. I just do not feel well at all.

Senator KENNEDY. Did you know at this time she was planning to return to Colorado?

Dr. LISZKA. No; she told me she was coming back to Washington.

Senator KENNEDY. She was coming back?

Dr. LISZKA. Yes.

Senator KENNEDY. And did you offer any medical comment? As I understand your response to Senator Hart, you had indicated you didn't think she should make the trip.

Dr. LISZKA. Yes.

Senator KENNEDY. Now she told you she wasn't feeling well. Did you offer any advice to her that she shouldn't make the trip back at all?

Dr. LISZKA. No; I did not advise her. I expected Dr. Laver to see her and advise her and I assumed that is why I should talk to Dr. Laver because she wants to see Dr. Laver.

Senator KENNEDY. And do I understand you correctly that she told you she was coming back to Denver?

Dr. LISZKA. No, I didn't say any such thing. I said I think she said something like "I will be back."

Senator KENNEDY. Back where?

Dr. LISZKA. To Washington.

Senator KENNEDY. Back to Washington?

Dr. LISZKA. Yes.

Senator KENNEDY. So she was planning to return to Washington?

Dr. LISZKA. Yes; she didn't say when, but eventually she will be back.

Senator KENNEDY. But you didn't know she was going to Denver?

Dr. LISZKA. No.

Senator KENNEDY. So sometime she changed her mind?

Dr. LISZKA. Apparently.

Senator KENNEDY. Within a couple of hours?

Dr. LISZKA. Well, it must have been when I talked to her in New York, it probably was Tuesday, I am just guessing.

Senator KENNEDY. When did she come back to Denver?

Dr. LISZKA. When did she go to Denver?

Senator KENNEDY. Yes.

Dr. LISZKA. I don't really know. Probably Thursday or Wednesday. She didn't tell me she was going to Denver and I did not pinpoint the time.

Senator KENNEDY. She didn't tell you at any time why she changed her mind?

Dr. LISZKA. No.

Senator KENNEDY. Didn't you think it was kind of strange? She said she was going to Washington, and she turned right around and went to Denver. And she is still, as I understand what you said, in rather serious condition and you never asked her, "Why did you change your mind?"

Dr. LISZKA. I didn't want to upset her and decided I am not, you know, my duty is not to guide her life, my duty is to improve her health, and whatever she tells me I listen to her. I have told her she needs a rest and she should have a rest.

Senator KENNEDY. Have you had any conversation with the doctor from ITT after this conversation you had with him on Tuesday?

Dr. LISZKA. No.

Senator KENNEDY. That is the only one?

Dr. LISZKA. Yes; he stated he came back to work only a couple of days earlier. He was off for half a year or so.

Senator BURDICK. Mr. Chairman, I have just one question.

You have testified that you more or less treated Mrs. Beard for the past 9 years and you have described her condition at various times during the years. At any time had she ever separated herself during that 9-year period from the ITT people? She was constantly on the payroll?

Dr. LISZKA. I don't know.

Senator BURDICK. As far as you know?

Dr. LISZKA. As far as I know.

Senator BURDICK. Was she ever required to take a leave of absence or break the continuity at any time that you know of?

Dr. LISZKA. I sort of vaguely recall that I occasionally told her you should take a rest.

Senator BURDICK. She was still on the payroll?

Dr. LISZKA. I never discussed that.

Senator BURDICK. My point is was her condition at any time serious enough that she could not work and draw a salary?

Dr. LISZKA. Well, she had several major operations and during that period of time and subsequent to those she did not work, but whether she was off the payroll or on the payroll I do not know.

Senator BURDICK. She was on the payroll the last time you saw her?

Dr. LISZKA. I assumed so.

Senator BURDICK. That is all.

The CHAIRMAN. Now you state when she was talking to Mr. Hume you were present?

Dr. LISZKA. Yes.

The CHAIRMAN. She told Mr. Hume that there was no connection between the contribution to the city of San Diego and the antitrust settlement?

Dr. LISZKA. That is right.

The CHAIRMAN. With ITT. You stated that her mentality at that time, she was in bad mental condition?

Dr. LISZKA. Yes.

The CHAIRMAN. But is it correct, if I understand you now, that she also had told you several times privately——

Dr. LISZKA. That is right.

The CHAIRMAN (continuing). That there was no connection?

Dr. LISZKA. That is right.

The CHAIRMAN. What was her mental condition at those times when she told you that?

Dr. LISZKA. Well, you know, generally when she came to my office I never observed anything unusual about her.

The CHAIRMAN. What else happened, if anything, in the conversation with Mr. Hume in your presence?

Dr. LISZKA. Well, they had discussed a great deal of details of business related to ITT which I am afraid I cannot recall. I am not familiar with the subsidiaries of ITT and they discussed different subsidiaries. I never even heard their name before, I cannot quite recall what it was. But Mr. Hume, he always kept coming in a circle, came back to the fact was there any connection between the settlement

and the convention or contribution and she always emphatically stated no.

The CHAIRMAN. She always stated——

Dr. LISZKA, Emphatically stated there was no connection.

Senator SCOTT. Mr. Chairman.

Would your entries on your calendar or docket show whether or not the conversation you had with Mrs. Beard at her home when Mr. Hume was present was on the 22d or 24th of February? Would you have any record of that or would you recall it independently? Was it Tuesday, the 22d, or Thursday, the 24th?

You don't recall?

Dr. LISZKA. As far as I know there was only one conversation.

Senator SCOTT. There was one. But you don't remember whether it was on the 22d of February or the 24th of February?

Dr. LISZKA. No, I can't state that.

Senator SCOTT. Would you have any entry on your diary which you could give the committee later as to when the meeting took place?

Dr. LISZKA. I probably would.

Senator SCOTT. Would you give that to the committee?

Dr. LISZKA. Yes.

Senator SCOTT. And the Senator from Massachusetts in one of his questions included the reference to the fact that Mrs. Beard had mentioned in her meeting with the Attorney General, when he dressed her down, that this was an hour-long diatribe. Did she use any such phrase to you?

Dr. LISZKA. No.

Senator SCOTT. She didn't refer to the duration of the conversation?

Dr. LISZKA. Not that I remember. That was some time ago and she may have but——

Senator SCOTT. I thought perhaps you didn't quite catch what the Senator from Massachusetts said. When you said substantially, you were not replying to the inference it was an hour long diatribe?

Dr. LISZKA. No; but it must have been quite a dressing down and probably it lasted—she said it was long and very firm, he really gave it to me, she said, something like that. She has a colorful language.

Senator HRUSKA. You replied to Senator Scott that your diary or your office records might show the date of that meeting?

Dr. LISZKA. Yes, sir.

Senator HRUSKA. Where did you receive the telephone call from Mrs. Beard? Where were you at that time?

Dr. LISZKA. In my office. That is why I am thinking I might have it in the record.

Senator COOK. Doctor, you were asked relative to the conversation Mr. Hume had with Mrs. Beard on that occasion if you had occasion to talk to either Mr. Hume or Mr. Anderson since that conversation?

Dr. LISZKA. Yes, Mr. Hume called me once. I talked to him on the phone and I met him last night.

Senator HRUSKA. What was the conversation that you had with Mr. Hume on the phone and what kind of conversation did you have with Mr. Hume personally last night?

Dr. LISZKA. He was mainly asking me about how is she doing and he also told me that according to information he had received her company is trying to throw her to the wolves. He used that expression.

Senator HRUSKA. Mr. Hume did?

Dr. LISZKA. Yes.

Senator HRUSKA. Then what did he say?

Dr. LISZKA. He said that we are not going to let this happen because she was a loyal employee of the firm for a long period of time, she doesn't deserve that.

Senator HRUSKA. Mr. Anderson and Mr. Hume were going to look after Mrs. Beard?

Dr. LISZKA. Yes.

Senator HRUSKA. I see.

Thank you, Mr. Chairman.

Senator GURNEY. Doctor, back to this Attorney General conversation again. You learned about this from a phone call from Mrs. Beard; is that right?

Dr. LISZKA. About the conversation with the Attorney General?

Senator GURNEY. The so-called dressing down.

Dr. LISZKA. No; that was a personal meeting with her.

Senator GURNEY. And where was that?

Dr. LISZKA. Well, that was quite some time ago, last May I suppose. I really don't remember whether she told me that in my office or some other place.

Senator GURNEY. It was some medical conversation you were having with her?

Dr. LISZKA. Yes, because she said "I am very disturbed about it, I get very upset," and she again emphasized the fact he was on her.

Senator GURNEY. How did it happen to come up?

Dr. LISZKA. She complained about how nervous I am because of the dressing down, how much it affects me. I never thought a person could do that to me.

Senator GURNEY. She was talking about her being disturbed?

Dr. LISZKA. Yes, sir.

Senator GURNEY. Mentally?

Dr. LISZKA. Yes.

Senator GURNEY. Irrational, the same thing we were talking about before?

Dr. LISZKA. She said that, well, I assumed in my mind she must have said something to the Attorney General that he didn't like or approached him in the way he didn't like and he let her have it.

Senator GURNEY. Did she bring up with you on various occasions when you were examining her, her mental problems, her disturbances, her irrationality?

Dr. LISZKA. No; she didn't discuss this with me. I observed, you know, these problems. Most people are not aware of it.

Senator GURNEY. One other question. I didn't understand why you were present at the meeting between Mrs. Beard and Mr. Anderson's representative. Why were you there?

Dr. LISZKA. She called me. She was about to have a very unpleasant meeting and she was extremely nervous and upset about it and I advised her to take a couple of tranquilizers and she said if you can come over, and I did go over.

Senator GURNEY. Again this went right to this business of her being nervous and disturbed and she wanted you on hand?

Dr. LISZKA. That is right.

Senator GURNEY. To stand by and protect her in case——

Dr. LISZKA. When she gets nervous and disturbed she has symptoms of heart trouble, deficiency, it affects her heart, and I think she felt more secure, you know.

Senator GURNEY. That is all.

Senator COOK. One last question, if I may.

Doctor, at any time during the discussions with Mr. Hume or any conversations you may have had with Mrs. Beard from New York or otherwise, did she at any time mention Mr. Richard Kleindienst, the Assistant Deputy Attorney General of the United States?

Dr. LISZKA. No; I mean she mentioned him in a negative way, that I do not know him and I had no dealings with him. So that is the only way she mentioned his name.

Senator GURNEY. Thank you, Mr. Chairman.

Senator MATHIAS. One question.

Doctor, at any time during the period which you have been attending Mrs. Beard has her emotional condition, the irrationality that you have described to the committee, been such that it would have prevented her from, say, executing a last will and testament or executing a contract?

Dr. LISZKA. Oh, yes, definitely so.

Senator MATHIAS. You feel that it has been so severe she would not have been capable of performing legal acts of that character?

Dr. LISZKA. That is right.

Senator GURNEY. One other question. Along that same line, Doctor, it would not have surprised you either, because of what you know about her state of disturbance or irrationality, that she might have written a memo, such as the subject of discussion of this committee, in a fit of anger or peak of rage that might not have represented the true facts; is that correct?

Dr. LISZKA. I would say not so much in a fit of rage but more like having lost the capacity of judgment and put together things in an uncoordinated fashion instead of, you know, really logically in sequence, throw together unrelated subjects.

Senator GURNEY. This would not have been unexpected from your knowledge of that patient?

Dr. LISZKA. No.

Senator GURNEY. And also from your knowledge of the patient you would not be surprised either if such a memo did not present true facts; is that correct?

Dr. LISZKA. No, I wouldn't be surprised.

Senator GURNEY. That is all.

Dr. LISZKA. Particularly not because what I heard from her was different.

Senator GURNEY. Thank you.

Senator HART. Mr. Chairman.

Do I understand you to describe this woman as suffering over a long period of time so that frequently she could not have even made a contract? Is that in substance what you are saying?

Dr. LISZKA. Yes. Don't forget—

Senator HART. You never communicated that with ITT in these conversations with her?

Dr. LISZKA. I cannot.

Senator HART. You what?

Dr. LISZKA. I couldn't possibly.

Senator HART. You were talking to them about her health condition, weren't you?

Dr. LISZKA. Yes, about her heart condition.

Senator HART. Why didn't you tell them about that?

Dr. LISZKA. Well, I was specific.

Senator HART. Why did you do with one and not the other?

I want to make clear to him I am trying to find out why did you discuss her condition with physicians of ITT but you could not discuss with them this frequent series of incapacities, if this is what I may call them?

Dr. LISZKA. I don't think the incapacities are organic.

Senator HART. I don't care whether they are organic or not, they are her condition, aren't they?

Dr. LISZKA. There is a big difference whether it is organic or not.

Senator HART. When two physicians are talking?

Dr. LISZKA. Yes, sir.

Senator HART. Are you sure of that?

Dr. LISZKA. Oh, yes; I am very sure.

Senator HART. Then explain why.

Dr. LISZKA. An organic condition is something which stays with you; which is an inherent disability, either brain or any organ of the body. Now, the periodical things I am referring to, it is an effect of chemicals, you know, like alcohol, which only effect her when she takes them.

Senator HART. Well, then not to pursue that but to return to your role as you have described it as a friend of hers as well as her physician, did you ever suggest to her that she should have psychiatric attention? I take it you are not one?

Dr. LISZKA. I am definitely not one. You don't advise someone where the reason is obvious why you have a problem to go to a psychiatrist, you advise them just on the plain English what to do and what not to do. A psychiatrist will not be able to do a lot more for you than any other physician or even a person with commonsense.

Senator HART. No wonder we can't cure alcoholism if that is the theory.

Dr. LISZKA. It is a strange situation. There are people who simply cannot put drinking away. They drink regularly every day. She is not one of those. She will drink under tension only. When she is under tension she will drink. She will use alcohol as a tranquilizer. She will not drink if she is happy and she is not an alcoholic, in other words.

Senator HART. Did she have a problem as a result?

Dr. LISZKA. Well, you know, the definition of alcoholic is in medicine——

Senator HART. As a friend and physician did you think that you had no responsibility to give her counsel?

Dr. LISZKA. Yes.

Senator HART. With respect——

Dr. LISZKA. Sure.

Senator HART. Other than organic conditions, as you have put it?

Dr. LISZKA. I advised her what she should do.

Senator HART. Which was what?

Dr. LISZKA. She should go to her medical doctor and——

Senator HART. What are you?

Dr. LISZKA. I mean a general physician. She had a general physician.

Senator HART. To go to a general physician with respect to what aspect of her condition?

Dr. LISZKA. Like if she had a cold or something like that.

Senator HART. I am talking about the problem that you have suggested, would have us understand was rather frequent, namely, of incapacity to function, not because of any organic condition.

Dr. LISZKA. Well——

Senator HART. What did you tell her to do about that?

Dr. LISZKA. I understand, you know. The reason for that is obvious; she should not have used alcohol as a tranquilizer. You don't need an expert or psychiatrist——

Senator HART. It is my understanding that people with that problem need help.

Dr. LISZKA. Yes; she knew exactly——

Senator HART. What did you do, give counsel or help?

Dr. LISZKA. She was aware of her problem. She was aware of the fact that she needs to avoid that, but she just didn't have enough willpower and I don't think any psychiatrist will be able to give you willpower.

Senator HART. Other than the occasion when you were with her and the newspaperman, Mr. Hume, when did she say there was no connection between the payment of money to the Republican convention group and the antitrust matter?

Dr. LISZKA. She said that subsequently, that this was a ridiculous thing.

Senator HART. Subsequent to what?

Dr. LISZKA. To that meeting, the next day or whatever, what a ridiculous thing it is to even think about it when I was working on the convention, somewhere starting in January I think she mentioned, and it was totally independent, this merger problem didn't come up.

Senator HART. We understand that you understand her to say that she, before the publication of the memo, she had told you of a meeting with Attorney General Mitchell and a lecture that he gave her?

Dr. LISZKA. That is right.

Senator HART. But prior to the publication of the memorandum——

Dr. LISZKA. Yes.

Senator HART. Did she ever tell you there was no connection between the money and the Justice Department?

Dr. LISZKA. She told me that, you know, she could not approach, she apparently approached the Attorney General about that merger at the time of the Kentucky Derby and the Attorney General advised her in very certain terms that to go through proper channels, whatever that means. The money didn't come up at that time.

Senator HART. There was no discussion?

Dr. LISZKA. No.

Senator HART. Nor denial by her of the material in the memorandum bearing on the connection between the money and the Justice Department until after the publication?

Dr. LISZKA. As far as I understand she never discussed the merger any more with the Attorney General because he just shut her off, you know.

Senator HART. You said there were other occasions, in reply to a questions from the chairman, when she denied the money connection.

Dr. LISZKA. Yes.

Senator HART. I am trying to find out when the first denial was made.

Dr. LISZKA. Well, I wouldn't be able to remember whether it was after the conversation or before.

Senator HART. How could it come up before?

Dr. LISZKA. I don't know.

Senator HART. Could it?

Dr. LISZKA. No; I don't think so. As I say, I don't remember.

The CHAIRMAN. I have a letter from Erwin Griswold, Solicitor General of the United States. [Reading].

DEAR SENATOR EASTLAND: A representative of Senator Kennedy's office has asked me to make a statement with respect to the request for an extension of time in April 1971, in the case of *United States v. International Telephone & Telegraph Co.*, involving the divestiture of Grinnell Corp.

I have prepared the statement requested and am sending it to you herewith. Copies are also included so that they may be available to all the members of the committee.

A copy of the statement is being sent direct to Senator Kennedy.

That letter will go into the record and also a copy of the memorandum, which I haven't read.

Senator KENNEDY. I think we ought to read his whole statement.

The CHAIRMAN. Well, go ahead and read it.

Senator KENNEDY. You can read it.

The CHAIRMAN. You make me work for a living. [Reading].

I have been asked to make a statement with respect to the filing of the Jurisdictional Statement in the case of *United States v. International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation. This was No. 1718, October Term, 1970, in the Supreme Court, and became No. 70-177, October Term, 1971.

On the afternoon of April 19, 1971 (it may have been April 18, 1971, but I believe it was April 19), my secretary told me that the Deputy Attorney General wanted me to come to his office. I went there, and found Assistant Attorney General McLaren with the Deputy Attorney General.

The Deputy Attorney General asked me what the time situation was with the I.T.T. case. I replied that we were awaiting the final print of the Jurisdictional Statement from the Government Printing Office, and that April 20 was the final day for filing. He asked me if there was any way that we could get more time. I replied that that might be possible, but I added that we were supposed to ask for extensions at least ten days in advance. I said that we very rarely failed to comply with the ten-day rule, and that I thought we stood a good chance to get the extension in this case, particularly if we had a good reason. He asked me to try to get the extension.

During the discussion it was stated (I do not recall whether this was by the Deputy Attorney General or by Mr. McLaren) that a letter had been received from Lawrence E. Walsh, of the Davis Polk firm in New York, requesting the government reexamine the question whether conglomerate mergers should be reviewed by litigation or through requests for further legislation. I did not see Mr. Walsh's letter, but I recall that reference was made to the fact that he said that other officers or agencies of the government had views on this question which should be considered.

Following the discussion in the Deputy Attorney General's Office, I went back to my office and asked my Deputy, Mr. Friedman, to prepare an application for extension of time in the *Grinnell* case. I gave him a verbal summary of the discussion in the Deputy Attorney General's Office. Mr. Friedman wrote the application for extension of time, but I read it and approved it. It was in accord with my understanding of the facts at the time.

The CHAIRMAN. It will be admitted into the record.
(The material referred to follows:)

OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., March 6, 1972.

Re: Nomination of Richard G. Kleindienst

Hon. JAMES O. EASTLAND,

Chairman, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND. A representative of Senator Kennedy's office has asked me to make a statement with respect to the request for an extension of time in April, 1971, in the case of *United States v. International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation.

I have prepared the statement requested, and am sending it to you herewith. Copies are also enclosed so that they may be available to all the members of the Committee.

A copy of the statement is being sent direct to Senator Kennedy.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

STATEMENT BY ERWIN N. GRISWOLD

I have been asked to make a statement with respect to the filing of the Jurisdictional Statement in the case of *United States v. International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation. This was No. 1718, October Term, 1970, in the Supreme Court, and became No. 70-177, October Term, 1971.

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ERWIN N. GRISWOLD

Senator KENNEDY. Just to get this straight, Doctor, as I understand the column, Mr. Anderson's column says that Mrs. Beard met Mitchell in Kentucky and discussed the ITT antitrust case with her, and you confirm that, do you not?

Dr. LISZKA. Well, yes, I assume we agree on that.

Senator KENNEDY. It says she was dressed down by Mr. Mitchell for the way she had been handling the ITT antitrust case, and you confirm that?

Dr. LISZKA. Yes, that is substantially what I said.

Senator KENNEDY. Now, as I understand, the column doesn't say anything about any discussion in Kentucky about San Diego so there is nothing to confirm about that.

Dr. LISZKA. No.

Senator KENNEDY. The column says she subsequently has denied that there was any connection between the antitrust case and San Diego, and you confirm that?

Dr. LISZKA. Yes.

Senator KENNEDY. The column says she does not deny writing the memorandum, and you confirm that?

Dr. LISZKA. Yes; neither did she say that I do remember writing it.

Senator KENNEDY. Well, didn't you have a discussion about who wrote the memorandum?

Dr. LISZKA. Who wrote it.

Senator KENNEDY. Yes.

Dr. LISZKA. No; I guess she just assumed that was her but she did not confirm, she never made a statement.

Senator KENNEDY. She did not deny it?

Dr. LISZKA. No, she did not deny it.

Senator KENNEDY. Did she deny to you that she outlined the settlement ITT wanted to Mr. Mitchell?

Dr. LISZKA. I am sorry——

Senator KENNEDY. Did she deny to you——

Dr. LISZKA. Yes.

Senator KENNEDY (continuing). That she outlined the settlement ITT wanted to Mr. Mitchell?

Dr. LISZKA. She never said that, she never informed me about it. She just said Mr. Mitchell gave me a very hard time because I approached him. She did not outline it, no.

Senator KENNEDY. And did she deny to you that she was involved in getting the ITT money for San Diego?

Dr. LISZKA. I don't think that ever came up in my presence.

Senator KENNEDY. You don't remember?

Dr. LISZKA. She denied any connection between the settlement.

Senator KENNEDY. We have answered that one, I believe.

This is asking you whether she denied to you she was involved in getting the ITT money for San Diego?

Dr. LISZKA. No, I don't think we ever discussed that.

Senator KENNEDY. And did she ever mention that she either was or was not, last May 12, in San Diego, at the Half Moon Inn with a group, including Mr. Wilson, Gencen and Howard James, President of ITT-Sheraton?

Dr. LISZKA. No.

Senator KENNEDY. Do you know whether she was, did she even mention she was out to San Diego to you?

Dr. LISZKA. Yes, she told me in the past she was in San Diego but I wouldn't remember what time, she did not tell me with whom.

Senator KENNEDY. Was it recently, do you know whether it was this spring?

Dr. LISZKA. Senator, I really, you know——

Senator KENNEDY. Can you remember what she told you about that conversation? When she was out in San Diego, was she talking——

Dr. LISZKA. She talked about how much she liked the city but she did not tell me anything about any business she conducted there.

Senator KENNEDY. One point. In your earlier responses describing the mental condition of Mrs. Beard, you talked about how she was,

I think, angry and mad, I think were the words you used. Is that correct?

Dr. LISZKA. Yes.

Senator KENNEDY. Now, as I understand, she had this meeting in Kentucky on May 1, she went to San Diego on the 14th, the 12th rather, and the memo is dated June 25, so there is a period of about 7 weeks there from the time, I guess that she got so angry at Mr. Mitchell and the time she wrote——

Dr. LISZKA. She didn't say that she was angry at Mr. Mitchell or anything.

Senator KENNEDY. Did she tell you——

The CHAIRMAN. Wait a minute.

Dr. LISZKA. She simply stated I was angry, I was mad when I wrote the memo.

Senator KENNEDY. Did she tell you what she was mad or angry at?

Dr. LISZKA. No.

Senator KENNEDY. She was just mad on the 25th of June and wrote the——

Dr. LISZKA. Your guess is as good as mine.

Senator KENNEDY. Have you read the memorandum?

Dr. LISZKA. Mr. Hume, when Mr. Hume, yes.

Senator KENNEDY. Did you gather from reading through that what she might have been mad at?

Dr. LISZKA. Well, reading that memorandum, you know, it reflected to me if I write a medical paper, if I do, I try to be very logical and strictly in sequence, and this memo doesn't strike me as, you know, very well thought out, very well planned. It is a haphazard sequence of thoughts.

Senator KENNEDY. Just going back into the information that you give to the ITT doctor, I thought earlier this morning you drew the connection between the heart condition of Mrs. Beard and her mental condition.

Dr. LISZKA. Yes.

Senator KENNEDY. Well, then, if that is the case, why wouldn't you have talked to ITT about her mental condition?

Dr. LISZKA. Well this is something any doctor will know—in a heart failure your brain is suffering—it is not something that you have to specifically state. That is an obvious medical fact. If I said X has heart failure we know that his brain is suffering, his kidneys are suffering, and doesn't need, you know——

Senator KENNEDY. Were the mental lapses then connected, solely connected to her heart condition?

Dr. LISZKA. No, I wouldn't think so.

Senator KENNEDY. But they were sometimes related?

Dr. LISZKA. That is right.

Senator KENNEDY. And wouldn't you have felt, in giving the full report to the doctor at ITT, that at least those incidents that related to her cardiovascular condition and those mental lapses that were due to the——

Dr. LISZKA. Well, I would expect——

Senator KENNEDY. They should have been informed.

Dr. LISZKA. I think I would expect the doctor to know that, if one goes into heart failure that will be one of the side effects.

Senator KENNEDY. Does heart failure always result in mental changes?

Dr. LISZKA. It depends on the degree, you know.

Senator KENNEDY. It does depend?

Dr. LISZKA. It does depend.

Senator KENNEDY. Sometimes it does and sometimes it does not?

Dr. LISZKA. Yes.

Senator KENNEDY. And, that being the case, wouldn't you feel that there was at least some responsibility in notifying ITT in terms of giving a complete——

Dr. LISZKA. Well, not necessarily. We generally do not notify employers, you know, about results of our medical examination or investigations.

Senator KENNEDY. In the memorandum there is one next to last paragraph that says "We all know"—and I am reading from it—"We all know Hal and his big mouth. But this is one time he cannot tell you and Ned one thing and Wilson (and me) another." Does this indicate that she might have been mad at Hal and maybe Bill for their handling of the San Diego project?

Dr. LISZKA. Well, I have no knowledge about how they handled it and I do not know the people personally, so I couldn't——

Senator KENNEDY. You didn't hear any comment about it?

Dr. LISZKA. No.

Senator KENNEDY. Or hear her say anything about it?

Dr. LISZKA. No.

Senator KENNEDY. Finally, I believe you said that she had been working on the San Diego convention since January, is that right?

Dr. LISZKA. Yes, this is what I recollect.

Senator KENNEDY. Did she ever say to you when she started to work on the antitrust case?

Dr. LISZKA. No; I would expect the only thing I ever knew about that was her conversation with the Attorney General, which was ill-fated, apparently.

Senator KENNEDY. And you knew she was working on the antitrust case?

Dr. LISZKA. No; that is the only thing I know about it. She has talked to me occasionally about the company has a problem of acquiring certain firms, you know, and there is litigation or something but that is all she said.

Senator KENNEDY. When was that—you gathered the impression she was working on the antitrust case?

Dr. LISZKA. No.

Senator KENNEDY. Thank you, Mr. Chairman.

Senator BURDICK. I have one question.

When you conducted the physical examination did you file a written report with the company?

Dr. LISZKA. No.

Senator BURDICK. Of the condition of her health?

Dr. LISZKA. No, they never requested. I might have had a written report sometime in the years back, I wouldn't remember, but they never requested a copy of my record, no. I cannot send my records unless the patient approves it.

Senator BURDICK. I understand that.

Dr. LISZKA. And they never requested it so I had no reason to do so. Senator BURDICK. That is all.

The CHAIRMAN. Now, I understood Senator Kennedy to ask you, maybe I am wrong, that the Attorney General dressed her down because of the way she was handling the antitrust case. Wasn't the reason that she was dressed down was because she approached the Attorney General?

Dr. LISZKA. Apparently, because she told me that his reply was to approach it through the proper channels, whatever that is. She did not explain what the proper channels are.

The CHAIRMAN. Any further questions?

Thank you, Doctor.

(Whereupon, at 12:40 p.m., the hearing was recessed to reconvene at 10:30 a.m., on Tuesday, March 7, 1972.)

RICHARD G. KLEINDIENST

TUESDAY, MARCH 7, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Burdick, Tunney, Hruska, Fong, Scott, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. The committee will come to order.

Who on this side has any questions?

Senator SCOTT. Not at this time.

TESTIMONY OF RICHARD G. KLEINDIENST, ACCOMPANIED BY RICHARD W. McLAREN, FELIX G. ROHATYN, AND KEITH I. CLEAR- WATERS—Resumed

Mr. KLEINDIENST. Mr. Chairman, I wonder if I would be permitted to make a preliminary statement this morning that touches upon one aspect of the interrogation and our answers just before the hearing concluded on Friday, and then following that, Mr. McLaren would like to read a prepared statement that would likewise touch upon that?

One course of questioning or inquiry by, I believe, Senator Kennedy and Senator Bayh, was the circumstances that gave rise to the request by the Solicitor General to ask for an extension of time within which to file the jurisdictional statement with the Supreme Court in the *Grinnell* appeal. I believe that both Mr. McLaren and I had a rather hazy recollection as to just what those circumstances were. The testimony will speak for itself, but I think we both agreed that we discussed it with each other.

I think one question put to me was did I discuss it with anybody else in the Department and I said at that time that I had no such recollection of it. Just at the conclusion of our testimony, when we were talking about whether the judge had to be here or not, Mr. Comegys, who is the Acting Assistant Attorney General in the Antitrust Division, who was present and sitting to the right of Mr. McLaren, was going through the file in the *Grinnell* case and exhibited to Mr. McLaren, to Judge McLaren and me, at that time a letter dated April 16, 1971, from Lawrence E. Walsh of the Davis, Polk

firm in New York, together with a memorandum of law. Both of us at that time remembered that that had a significant part to do with that decision. We were going to confer about it during the recess and then bring it before the attention of the committee that afternoon and then the chairman recessed the hearings until today.

Judge McLaren and I are kind of glad that that occurred, because yesterday we had an opportunity to confer with the Solicitor General and ourselves and we have had an opportunity to refresh our recollection on the circumstances that gave rise to that extension.

At or about April 16, and I think it was on April 16, although it could have been the day before, on April 15—and I have talked to Judge Walsh in New York to likewise refresh my recollection—he called me to ask whether or not he could submit to me a letter and a memorandum of law by which, on behalf of ITT, they would request an extension of time or a delay before we filed our jurisdictional statement. I told him that Judge McLaren was handling the matter.

He said, well, I will send it down to you and address it to you.

He sent it down by a young man in his office and it got to my office around 3 or 4 o'clock in the afternoon on Friday, April 16, by hand delivery.

When the young man came into my office, I placed a call in for Mr. McLaren. He was not there, and Mr. Comegys came up to my office.

I handed the letter dated April 16 and the memorandum of law to me from Judge Walsh and Mr. Comegys took it with him.

I believe that Monday was April 19. Mr. McLaren had—what he did with it, I don't know, and he is prepared to talk about that. But in any event, he called me and said he wanted to talk to me about the Davis, Polk or the Walsh request. He came into my office as we now piece the thing back together again and stated that he did not agree with the position taken by Judge Walsh in the memorandum of law and the letter.

I told him that I didn't have an opinion on it one way or another, but we discussed the fact that inasmuch as the Supreme Court could not hear this case during that term of the court, until there was an opportunity to consider the matter raised by Judge Walsh in his memorandum of law and the matters contained in his letters, there would be no harm in asking for an extension of time.

When we concluded that conversation, we then called the Solicitor, who came down to my office, and we both asked him to go to the Court and seek the extension of time. He was handed or had made available to him the memorandum of law and the letter from Judge Walsh.

I believe that the Solicitor General has prepared a statement that he submitted to the committee, and that statement followed also a conference with Judge McLaren and myself by which the three of us refreshed our recollection.

So, I wanted to start the hearing out this morning with that in the record, because our recollections were not precise when we concluded our testimony on Friday.

In that connection, if the chairman please, Judge McLaren likewise has a statement to make touching upon this.

The CHAIRMAN. He may proceed.

Judge McLAREN. Thank you, Mr. Chairman.

My supplementary statement covers certain matters which were raised by members of the committee last week and on which I promised to report and one other matter which came up over the weekend.

First, I would like to deal with the events which surrounded the filing of the *Canteen* case in March and April of 1969. Senator Hart requested that we produce these files and I am told that this is being done in accordance with the principles set forth in the prior testimony.

Senator HART. Mr. Chairman, to advise the judge, we have not received the files.

The CHAIRMAN. They have been filed with the committee this morning. I was going to apprise you of that.

Senator HART. Then we will reserve the right, unfortunate though it might be, after an opportunity to review them, to determine whether we would have to further intrude on the judge's time later in the hearing. But the purpose of asking for them was the hope that we would get them in time to intelligently discuss them.

Judge McLAREN. Well, I don't think, Senator, that the people in the Department were idle over the weekend. They had a pretty fair job.

Senator HART. My comment shouldn't indicate that I thought they didn't try. I am just explaining why a request for time on our part would be understandable.

Judge McLAREN. Yes, sir.

I understand that the Department also made available the public pleading files in this case as well as those in the *Hartford* and *Grinnell* cases. I am informed that certain materials which contain investigative materials are not being produced. These include our so-called AG memos and other memoranda which contain references to investigative material, witness interviews, and the like.

I previously testified that I had concluded on April 25, 1969, not to seek a preliminary injunction in *Canteen* because of the shortness of time remaining to challenge the merger and because of *Canteen's* management difficulties. Based on a review of the files, I find that after I made the original recommendation to sue in early April, at the request of cocounsel, I set up a meeting for them with Mr. Kleindienst and me at which the ITT and *Canteen* lawyers could, in effect, appeal my decision. At this meeting, the ITT lawyers argued that I was wrong on the law, but the *Canteen* lawyers pleaded that *Canteen* badly needed the assistance of ITT management by reason of some difficulties which had befallen the company and the illness of one of the founding family members who was one of its chief officers. This hardship story, plus the novelty of our theory—according to some—as well as the shortness of time persuaded me not to risk trying for a preliminary injunction.

I might add that it was an early trial staff recommendation not to go for a preliminary injunction in this case.

In the complaint which was filed April 28, we asked for an order requiring that the companies be kept separate pending the outcome of the suit and an agreed order to this effect was negotiated by May 27, 1969. Of course, *Canteen* is one of the companies to be divested under the consent decrees.

The second matter I was asked to cover is the appeal to the Supreme Court in *Grinnell*. On two occasions, the Solicitor General requested

extensions of time in which to perfect the appeal. Incidentally, such requests are not unusual in complex antitrust cases. My review of the file indicates that the first of these extensions was requested because the Solicitor General had not yet completed his review of my recommendation for appeal. At that point, he was not convinced that he should authorize the appeal.

Sometime after this extension had been attained, he did approve my recommendation, albeit somewhat reluctantly.

There are a number of memorandums which were written during this period dealing with the question of whether or not the Government should appeal. Some of these were prepared in the Antitrust Division and others in the Office of the Solicitor General. I am informed that these memoranda have been produced by the Department to the committee on the understanding that no copies will be made, that the confidentiality of the memorandum will be preserved, and after members of the committee have had an opportunity to review them, they will be returned to the Department. I think it is fair to say that these memos make it abundantly clear that we had anything but an open-and-shut case in *Grinnell*.

The facts surrounding the second extension of time are these, as nearly as I can reconstruct them. On April 16, 1971, one of the firms representing ITT, Davis, Polk and Wardwell of New York, by letter to Mr. Kleindienst, as he has said just a few minutes ago, urged that the Department of Justice not advocate any position on the conglomerate merger issue before the Supreme Court until it had given other interested Government departments an opportunity to comment. Counsel urged that the position which the Department had theretofore taken in challenging the ITT mergers amounted to far-reaching new law and was tantamount to legislation. Accordingly, it was argued by them that before taking a position in the Supreme Court, we should proceed on the same lines as we normally do in seeking new legislation by consulting other interested agencies. Counsel also noted that the additional period of review would not unduly delay a final decision by the Supreme Court and could not adversely affect the public interest.

Mr. Kleindienst forwarded the letter to me and we later discussed it. As I recall, we concluded that the request for additional time as requested in Mr. Walsh's letter was not unreasonable and I at least was very much interested to see what I assumed Mr. Walsh intended to produce from other agencies.

Mr. Kleindienst and I met briefly with the Solicitor General and he was asked to seek a second extension in the *Grinnell* case. The Solicitor General has submitted a memorandum to the committee in this regard and I understand that copies of the Davis, Polk letter also have been furnished to the committee.

I do not believe that any views came in from other agencies. In any event, we went ahead with the appeal. The Solicitor General on May 20 filed the jurisdictional statement which Senator Kennedy asked about at the last hearing.

The third matter which I wish to mention covers the so-called Ramsden report. After ITT's presentation of April 29, 1971, as I testified before, I decided that an independent appraisal of its arguments was necessary, a financial as opposed to an economic review. Mr. Ramsden had done similar consultation work for the Antitrust Division on the LTV case and my staff and I had been well impressed with him in our

meetings with him, and with his work. I testified last Thursday that I did not recall discussing the ITT cases during this period with Mr. Flanigan or anyone else in the White House. I continue to have no such independent recollection. However, it now appears that I requested Mr. Flanigan to secure the services of Mr. Ramsden. This probably was done by a telephone call, and, assuming that is what happened, Mr. Flanigan was simply a conduit for my request to Ramsden to make a study and report.

In any event, the clearly established facts are these: ITT made a presentation to us that divestiture of Hartford would result in severe financial hardship and other repercussions in the economy. We decided to have an independent evaluation of that presentation and Mr. Ramsden was retained for this purpose. Mr. Ramsden submitted his report on May 17, or shortly thereafter, as I now understand, to Mr. Flanigan, and, apparently, it was forwarded to me by Mr. Flanigan. Again, I have no specific recollection. As far as I am concerned, Flanigan was simply a conduit.

I read the report and found it persuasive. As I testified last week, my subsequent decision not to insist on the divestiture of Hartford was based on the ITT presentation, on Mr. Ramsden's report which independently confirmed ITT's views, on the brief report which MacLaury gave me from the Treasury, and on my own analysis and the work of my staff with regard to whether we could live with a settlement that didn't involve a divestiture of Hartford from the antitrust standpoint.

As far as I am concerned, the Ramsden report was prepared for and delivered to the Antitrust Division. Copies of that report have been submitted to members of the committee and I believe that its quality speaks for itself.

Now, my final point deals with the statements made over the last weekend by the two economists, Elzinga and Mueller.

(The statements referred to appeared in the press.)

Judge McLAREN. Although I am not informed as to the background of Mr. Elzinga's remarks and I am somewhat at a loss to understand them, I will respond to them at this time as best I can.

At the time we started work planning for final settlement in ITT cases in the latter part of May 1971, Mr. Elzinga, who was my special economics assistant from September 1970 to June 1971, was winding up his 1-year assignment. He was also involved in preparations for graduation exercises at the University of Virginia, to which he was returning in some sort of deanship capacity, and where he was going to deliver the commencement address.

I should also say that Mr. Elzinga, although having the title of my Special Assistant, worked for my two Deputy Assistant Attorneys General and for the Directors of Operations and Policy Planning, as well as directly for me. I think it is a fair statement to say that he was kept rather busy.

As I said earlier, I gave Mr. Hummel, Deputy Director of Operations, the job of preparing a possible plan of settlement with ITT under which they will keep Hartford. We picked others in the Division to help him and put the project on a confidential or "need to know" basis.

I have no specific recollection, but I assume that we did not bring Elzinga in on the project mainly because the problem we had was a

financial hardship matter, not an economic one. We consulted economists about filing the case and preparing for trial, but here the question was, assuming we were right on our economic theories, could we afford to win and get full, all-out relief from the standpoint of the overall public interest?

I assume we did not bring Elzinga in also because of the load of other work he had to finish up and the shortness of time during which he would continue to be with us.

He was not excluded, but since he was not assigned to the project, he was not in a need-to-know position.

Incidentally, operating on a need-to-know basis was standard policy with us in stock market-sensitive cases. This policy had been in effect since early 1969, when leaks from the Antitrust Division had, we thought, caused some flurries in the stock market.

With regard to Mr. Mueller, he, too, was an economist, not a financial expert. Also, he was not so much a consultant with us on these cases as he was an expert witness. It would have been somewhat unusual for us to consult with an outside expert witness with regard to settlement of the case.

Now, as to both Elzinga and Mueller, I would like to remind the committee that the agreement in principle and in the ITT cases was announced on July 31, 1971. The actual decrees were made public and filed in court on August 23, 1971, and a period of 30 days thereafter was allowed for filing of objections. That takes it up to the end of September, 2 months after the original announcement.

Now, despite the rather strong feelings which Messrs. Elzinga and Mueller expressed last weekend, I think it is significant that they filed nothing, published nothing, and for all I know, they said nothing against this settlement before. Certainly, if they knew of or even had reason to suspect any wrongdoing, they had a duty to come forward. But they didn't. And I think this puts their statements in proper perspective.

Certainly, if as really seems to me to be the case, their recent statements simply represent economists disagreements with lawyers' judgments on the soundness of a particular antitrust settlement, they are not germane to the present inquiry. As I said in my initial statement, I think—and I have reason to believe that many other knowledgeable antitrust people think that—this was an excellent settlement for the Government. We obtained very substantial divestiture, the largest ever in an antitrust case, and strong injunctions against ITT's making any more of the giant and leading firm mergers which had led to our original suits. We thus stopped the clear leader of what we felt was a highly anticompetitive merger movement dead in its tracks and we required it to back up quite a ways to boot.

Moreover, we did it without demanding from Congress more stringent and possibly very rigid new legislation. We did it under existing law but upon theories and evidence which had already been rejected finally by two district courts in *Canteen* and *Grinnell* and on preliminary injunction in *Hartford*. I remain confident that our theories were sound, but in these cases, success was far from certain.

This is an important point in evaluating the settlement, and it is perfectly clear that Messrs. Elzinga and Mueller entirely disregard this aspect of the matter in making their comments. What we obtained was substantial assured relief. What we gave up was the chance to

have our legal theories tested in the Supreme Court. Naturally, I am somewhat regretful of this. I would have liked to have our theories blessed with the stamp of the highest judicial authority. But when faced with a sure and immediate chance to do what we had set out to do in the spring of 1969, to stop the leaders of the great anti-competitive merger movement, I would not conscientiously pass up the chance. I exercised my best judgment, and it was concurred in by men of my staff who are experienced and dedicated career antitrusters, and I have given you their names. I say again I was not pressured or influenced in any improper way by anyone. I thank you very much.

The CHAIRMAN. We will rotate this now. We will give each member 10 minutes to ask questions. Senator Ervin?

Senator ERVIN. I have no questions.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Judge McLaren, you have made the statement that this ITT matter was anything but an open and shut case as indicated by the variety of opinions expressed in these memos which have been made available to us. What is the procedure to determine whether any case should be appealed, and particularly, what are the duties and responsibilities of the Solicitor General in that area?

Judge McLAREN. Well, the mechanics, Senator Hruska, are for the antitrust division under the primary responsibility of the appellate section to work with the trial staff on the case, to make up a recommendation to the Assistant Attorney General—to me when I was there. I would then review it and frequently have meetings with the trial staff and the appellate section, and if it appeared that we had good grounds for an appeal, I would then send a formal memorandum to the Solicitor General making that recommendation. That memorandum would be rather definitive on both the facts and the law.

Senator HRUSKA. Under the law, then, the Solicitor General at that point goes over the matter?

Judge McLAREN. That is right, sir, and he has the final authority.

Senator HRUSKA. And it is for him to make the final decision?

Judge McLAREN. He makes the final decisions.

Senator HRUSKA. Now, you referred also to the memorandum by Judge Walsh. In his brief statement that was filed with the committee yesterday, Dean Griswold referred to that memorandum. It was that memorandum among other things which took issue with your interpretation of the antitrust laws and their capability to reach situations of this kind without additional legislation.

Judge McLAREN. That is right, sir.

Senator HRUSKA. So Judge Walsh's memo was one of those memos, wasn't it?

Judge McLAREN. Yes, sir; and I interpreted his memorandum as indicating that other governmental agencies were going to make representations to us as to why we shouldn't go forward with this particular appeal. None such came in, however, in that situation.

Senator HRUSKA. Did Dean Griswold concur with you that it was a case to be appealed?

Judge McLAREN. Ultimately, yes, sir; reluctantly.

Senator HRUSKA. Why reluctantly?

Judge McLAREN. Well, I think that—

Senator HRUSKA. Or perhaps we should invite him here to tell us.

Judge McLAREN. Well, as I indicated, Senator Hruska, the Department has produced on an in-camera basis the various arguments, memorandums setting forth the arguments on different sides of the question. I might add that there were various Law Review articles and other speeches made by people in the antitrust field. I have in mind in particular a rather violent and vitriolic Law Review article written by one Lee Loevinger, Assistant Attorney General in charge of the antitrust division in the Kennedy administration, in which he blasted me for fair, not only that I couldn't win the case and shouldn't win the case, but I never should have brought it in the first place.

Senator HRUSKA. Well, I would like to say for the record that this appears to be a situation where we ought to have Dean Griswold here. We should afford him an opportunity to give us his ideas on this—your ideas are certainly very pronounced—and he should have a chance to give his. Yours have been declared in public; they have been declared in speeches, and also in testimony before our committee and elsewhere. Yet the committee has been aware that yours was a position that was not accepted by some of, by any of your predecessors as far as I know, as Assistant Attorney General of that division. Is that correct?

Judge McLAREN. Well, considering the particular—yes, sir; that is correct.

Senator HRUSKA. For that particular proposition.

Judge McLAREN. The dean, I think, considering the record and the findings in this particular case, *Grinnell*, and then, of course, we subsequently lost *Canteen*—and at the risk of putting him on the spot, I think Dean Griswold will say that we made a heck of a fine settlement out of a very slim reed.

Senator HRUSKA. Well, it is not a matter of putting anybody on the spot, you or anybody else. But there seems to be some difference of opinion concerning the proper characterization of the settlement in the ITT case—whether it was harsh or whether it was just about right or whether it was a giveaway. It seems to me that the Solicitor General being the outstanding figure he is in American jurisprudence today, and I think he enjoys the general confidence and professional respect of the bar and bench generally, it might be well, and I shall propose that to the chairman at a later time, that we consider inviting him here for the purpose of giving us his evaluation of this situation.

I thank you for your testimony.

Judge McLAREN. Thank you, Senator.

Senator ERVIN (presiding). Senator Hart?

Senator HART. Judge and Mr. Kleindienst, in my 10 minutes, I would just like to get the record squared up to insure against loose ends on the business of threats to resign. I think for everyone's interest, this should be made as precise as we can.

I have not read the transcripts of the hearings. I am told that Judge McLaren categorically denied the rumor that he threatened to quit over the failure of the Department to go for the preliminary relief in the *Canteen* case. You describe that as absolutely false?

Judge McLAREN. That rumor is completely wrong, Senator Hart. The failure to go for the preliminary injunction in *Canteen*, as I have testified, was my decision and I further point out that this isn't, again, an open and shut thing. We have got a miserable record on getting preliminary injunctions. The district judges know that there

is no appeal when we lose. It was a very serious question whether we should go for it and the trial staff, an initial recommendation from the trial staff was that we let them go ahead and close and then we sue them. We notify them, if you go ahead with this merger, you are going to get sued and if you close, it is on your own head. The trial staff felt that we had not the best case for preliminary injunction.

I nevertheless initially made the proposal to go ahead with a preliminary injunction. But then after I heard the hardship story from Canteen and I visualized the district judges, one of the district judges in Chicago hearing that story, and with the other weaknesses, I just didn't think it was worth the candle.

Now, at the same time, Senator HART, that this case was pending, there was a review, a policy review of our antitrust policies in certain main areas. I think that one of the principal things, certainly to me, in that was our antimerger policy. I am sure that if my recommendations on that had not been accepted, I undoubtedly would have resigned. But I did not threaten to. The policy recommendation, incidentally, was later approved.

I don't know where the story came from that I threatened to resign, but it is wrong. I did not.

Senator HART. Just parenthetically, what was the policy recommendation that you referred to in your answer?

Judge McLAREN. Well, it is kind of a small task force report. We had a small committee of which I was chairman, an interagency committee, and we took up various things that a new administration ought to focus on, including the conglomerate merger policy. It set forth conglomerate merger policy much in terms as I have given it in my speeches.

Senator HART. All right.

Next, I want to get clear for the record whether other rumors that you threatened to resign because of other disagreements in the Department were or were not true.

Judge McLAREN. I never threatened, never, in 3 years, I never threatened to resign.

Senator HART. You did not threaten in the *Canteen* case and you make that statement with respect to any other case?

Judge McLAREN. Every other case. I never threatened to resign, Senator. That is all there is to it. And I have said before, I got great backing. I had, I thought, an understanding with the Attorney General when I came in, and I think I got great backing from him. I think we made a fine team.

Senator HART. That means that in your position on the Warner-Lambert merger and the fact that the Department concluded finally to turn that over to the Trade Commission, that elicited no such threat of resignation?

Judge McLAREN. None. I have already told my position on that case, Senator. I thought that Mr. Kleindienst had a perfectly legitimate right to question it, it didn't violate the guidelines, and I thought we came up with a very good solution in sending it for further review over to FTC.

Again, you have got a good, sound, difficult question as to whether you will have any success on preliminary injunction there. It is a very, very iffy question.

Senator HART. I think no matter how we ask these questions, implications are drawn from them, perhaps some unfairly to the witnesses and perhaps some unfairly to the committee. But I think that we ought to get into the sworn record, then, this answer, because a leading figure in the Warner-Lambert Co., Elmer Bobst, described as one of the President's closest friends, was quoted by the White House correspondent for the National Journal in its January issue as saying that he spoke to people in the White House about the merger of Warner-Lambert, and that Mr. McLaren threatened to quit when his desire to sue was overruled.

Does anybody have any idea on what information Mr. Bobst might have reached that conclusion?

Mr. KLEINDIENST. Senator, you know the part that I played in the Warner-Lambert thing. Pursuant to my testimony, I was the Attorney General in that case because Mr. Mitchell had disqualified himself. As I indicated in my original testimony, I was called by the Attorney General when I was out of the city in Phoenix, Ariz., to say that the Antitrust Division, Mr. McLaren had brought up the recommended complaint in the Warner-Lambert thing on a Friday, that Friday, to seek an injunction to prevent a proposed merger that was to take place the following Thursday. And was I available to look into the matter on Monday.

I think I indicated that that was the only situation that I ever had to criticize the Antitrust Division, was the fact that they didn't bring up their recommendation until on the eve of the proposed merger.

I canceled my appointments on Monday, I met with representatives of Warner-Lambert and Parke, Davis. I conferred with Mr. McLaren on Tuesday and on Wednesday. I talked to no one at the White House about the case, I did not talk to Mr. Mitchell about it, and it wasn't until after the case was decided that I ever knew who Mr. Bobst was. I had never heard of him before.

Judge McLAREN. Me, too.

Mr. KLEINDIENST. I had never heard of Mr. Bobst. I can say to you, Senator Hart, that on my meeting with Mr. McLaren on Tuesday and on Wednesday, there was nothing but the most cordial—Tuesday and Wednesday of that week before the proposed merger—there was nothing but the most cordial relationship between myself and Judge McLaren, that under no stretch of the imagination, he even intimated either anger or ire or frustration or disappointment or suggested the possibility that he was going to quit if I did this. As a matter of fact, I was the one who was a little bit irate about it, that I was called upon on very short notice to pass on a very difficult question within hours before a proposed merger between two companies on a Thursday. And quite frankly, I thought it was a rather unfair imposition to place upon me. And I think the only ire that was ever expressed in the matter was my feelings about what I had to do.

I would decide that case again the same way under the same circumstances as I did then. To present to me a memorandum, and I think there was a legal theory for it, which, among other things, said that, incidentally, this doesn't come within our guidelines, and to have me, a relatively inexperienced or inexperienced lawyer on antitrust, have to say, well, nevertheless, we are going to tell these people who have arranged for this acquisition and merger, and they are very

complicated business transactions, that we are going to go to court and tell some judge to restrain you from doing that. I didn't do it then; I wouldn't do it today as long as I have to discharge that responsibility.

Senator HART. I think my time is up. Thank you.

Mr. KLIENDIENST. Thank you, Senator Hart.

Senator ERVIN. Senator Cook?

Senator COOK. Thank you, Mr. Chairman.

Judge McLAREN, when we get down to the basis that a decision had to be made whether to proceed to a preliminary injunction to stop an acquisition of three major companies or whether it became a matter, after a thorough discussion, that the agreement finally resulted in ITT giving up the fire protection division of Grinnell, Canteen, Avis, Levitt, Hamilton Life, and Life Insurance Co. of New York and being able to maintain Hartford and nothing but Hartford, is that correct?

Judge McLAREN. Yes, sir.

Senator COOK. Now, do we have in the record the sales or just the estimate of the sales of Grinnell, Canteen, and Avis and Levitt and Hamilton and New York Life?

Judge McLAREN. We provided for the record copies of the complaint of those cases, I believe, and in the complaints alleged the sales, probably, for 1968. I don't know that we had the sales as of 1970 or 1971 for the record. We can get that, I suppose, or certainly ITT can get it for the record.

Senator COOK. Well, they no longer belong to ITT, do they?

Judge McLAREN. I don't think that divestiture has been completed.

Senator COOK. It must be done within 3 years, as I understand it?

Judge McLAREN. I think that is right, yes.

Senator COOK. Now, the estimates that we have read in the press say that the gross sales of this combination of companies which ITT must divest itself of is approximately \$1 billion?

Judge McLAREN. Yes, sir, and approximately a billion dollars of assets.

Senator COOK. Do we have the estimated assets and the estimated sales of Hartford?

Judge McLAREN. It should be in the complaint against the Hartford Co. as of 1968 or 1969.

Senator COOK. Has it not also been publicly stated that this divestiture which was imposed upon ITT or upon which ITT agreed constitutes the largest divestiture of any corporation in the history of the United States?

Judge McLAREN. I think that is correct. It certainly is in my knowledge, and I have been practicing antitrust law for nearly 25 years, it is by far the biggest in my experience.

Senator COOK. Mr. Rohatyn, had you ever met Mr. Kleindienst before you met him on the first occasion after you telephoned him that you would like to discuss this matter with him?

Mr. ROHATYN. No, Senator.

Senator COOK. Had you discussed with the members of your board that it was your intention to talk to Mr. Kleindienst?

Mr. ROHATYN. No, sir, I only talked to Mr. Geneen.

Senator COOK. Were you of the opinion as a director of this corporation that a major financial catastrophe was about to face a company of which you were the member of the board and which you had a responsibility to?

Mr. ROHATYN. Yes, sir, I thought that would be a very serious economic problem for the company.

Senator COOK. And by reason of the company, its stockholders?

Mr. ROHATYN. Yes, Senator.

Senator COOK. Did you feel that you were fulfilling your responsibility as a member of the board in doing this?

Mr. ROHATYN. Absolutely.

Senator COOK. Would you, Mr. Rohatyn, again for the record, if you don't mind, just kind of give us a summary of what you thought of this settlement that was imposed on ITT to give up one, two, three, four, five, six, corporations for one?

Mr. ROHATYN. Senator, I thought that as a director, having been furnished with legal opinions that we were on sound ground, having won every case in the lower courts that came up, that to agree to these divestitures was a harsh settlement for the company, and I still think so.

Senator COOK. May I say with what is left of my 10 minutes, this reminds me of Judge Wyatt's opinion in the *Pfizer* case in the Lower District Court of New York when he recommended to those plaintiffs in that case that they settle with Pfizer, which settlement was a tremendous—as you know, judge—a multi-multimillion dollar settlement. Judge Wyatt said he recommended that the plaintiffs settle because their chances of recovery in court were 50-50 if not less. So, under the circumstances, they settled that case.

I think under the circumstances, you as a member of the board thought that the treatment you were given by the Justice Department was rather harsh? Is that correct?

Mr. ROHATYN. Yes, Senator.

The CHAIRMAN. Thank you, Mr. Rohatyn.

Senator ERVIN. Senator Kennedy?

Senator KENNEDY. I have a question for the chairman.

I understand that maybe the counsel had let us know that Mr. Petersen of the Justice Department wrote a communication to the committee. I understand individual members have received some communication about the Dr. Liszka who appeared yesterday. I am wondering if either counsel has this letter or—could we get the letter?

(The letter referred to appears subsequently in the record at page 269.)

Senator KENNEDY. Mr. Kleindienst, did you have lunch yesterday at the Metropolitan Club?

Mr. KLEINDIENST. Yes, Senator; I did.

Senator KENNEDY. With an R. Moore?

Mr. KLEINDIENST. Richard Moore.

Senator KENNEDY. Is he a president of ITT or special counsel to the President?

Mr. KLEINDIENST. I think he is special counsel to the President. I do not believe he has any connection with ITT. If he does, I don't know.

Senator KENNEDY. But are you in touch with Mr. Moore, R. Moore?

Mr. KLEINDIENST. Mr. Moore is a very close personal friend of mine. I got to meet him when he joined Mr. Mitchell's staff at the Department of Justice sometime in 1970.

Senator KENNEDY. What was his role there?

Mr. KLEINDIENST. He was a special assistant to the Attorney General. He is a lawyer, he has had quite a bit of experience in the media. He is a writer. He is one of the finest persons that I have had the privilege to know and meet since I have been in the Government and he and I have a very close personal relationship. I have lunch with Mr. Moore, particularly since he left the Department, oh, I would say, about once a month.

Senator KENNEDY. And what is his responsibility now?

Mr. KLEINDIENST. Sir?

Senator KENNEDY. What is his responsibility now?

Mr. KLEINDIENST. He is on the President's staff in the White House. I don't know what that is, Senator Kennedy.

Senator KENNEDY. Where is he from, do you know? Where is his home?

Mr. KLEINDIENST. Well, I think when he came to the Government, I believe he was living in Los Angeles, or California.

Senator KENNEDY. Do you have a copy of the letter that Mr. Walsh sent to you?

Mr. KLEINDIENST. I don't have one here with me.

Senator KENNEDY. Could a copy be made available?

Mr. KLEINDIENST. I submitted it to the committee.

Just 1 minute, Senator. I think Mr. Clearwaters has it.

Senator KENNEDY. Mr. Comegys?

Mr. KLEINDIENST. No, this is Mr. Clearwaters. Mr. Comegys was here, but he is in Paris.

Senator KENNEDY. Will he be coming back?

Mr. KLEINDIENST. I hope so. He is the Acting Assistant Attorney General of the Antitrust Division. After this hearing, I don't know if he is going to come back or not.

Senator KENNEDY. Is he going to be back with us at any time?

Mr. KLEINDIENST. I think he is coming back at the end of the week. He is over there on Department business.

Senator KENNEDY. As I understand, this has been made available to the members of the committee, but not generally. Could we go over this letter? It is not terribly long.

Would you be kind enough maybe as we move along?

Mr. KLEINDIENST. I have a copy of it before me.

Senator KENNEDY. If it is all right with you, I can either let you go through or ask some questions as we go through, whichever you are comfortable about.

Mr. KLEINDIENST. Let me read it if I may, please.

Senator KENNEDY. Why don't you read it aloud? It is not very long.

Mr. KLEINDIENST. I would be happy to.

Senator KENNEDY. I would like to, Mr. Chairman, just on the question of time. This is a key matter. I would rather not have this count against my time.

Senator COOK. Well now, Mr. Chairman——

Senator GURNEY. Mr. Chairman, I think——

Senator COOK. I want to be nice to the Senator, but if he is familiar with the letter——

Senator KENNEDY. It has been made available to the committee, not to the public. I can isolate parts of it. I think to put it in context is just, if you will.

Senator GURNEY. Move the way you want to, but move within your 10 minutes.

Senator KENNEDY. I have plenty of time if you want to do it in my 10 minutes

You read it.

Senator ERVIN. I was going to say as the temporary chairman, I don't want to overrule the permanent chairman.

Mr. KLEINDIENST. Do you want me to read the letter, Mr. Chairman?

Senator KENNEDY. You read it on my time.

Senator COOK. I might suggest to the Senator that the staff can make copies of it and distribute it to the press.

Senator KENNEDY. He can read it and I will proceed in my own way.

Mr. KLEINDIENST. This letter is on the stationery of Davis, Polk, & Wardwell, 1 Chase Manhattan Plaza, New York, N.Y. Dated April 16, 1971. Addressed to Hon. Richard G. Kleindienst, Deputy Attorney General, U.S. Department of Justice:

DEAR DICK: As I told you over the telephone, our firm has represented ITT, as outside counsel, ever since its incorporation over 50 years ago.

A few weeks ago, Mr. Harold S. Gencen, Chairman and President of ITT, asked me to prepare a presentation to you as Acting Attorney General and, through you, to the national administration on the question of whether diversification mergers should be barred and, more specifically, urging that the Department of Justice not advocate any position before the Supreme Court which would be tantamount to barring such mergers without a full study of the economic consequences of such a step.

Senator KENNEDY. Could we go a little slower?

Mr. KLEINDIENST. Paragraph:

To us this is not a question of the conduct of litigation in the narrow sense. Looking back at the results of Government antitrust cases in the Supreme Court, one must realize that if the Government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department.

Senator KENNEDY. Just now, Mr. Kleindienst, it would appear to me that here is the attorney for ITT suggesting that the Justice Department has an open-and-shut case.

Mr. KLEINDIENST. Well, not an open and shut case.

Senator KENNEDY. Well, it says that there is a high probability that it will succeed. "Indeed, the court has at times adopted a position more extreme than that urged by the Department."

And this is the attorney, the lawyer for ITT?

Mr. KLEINDIENST. That is what he said. He represents him to be an attorney in a firm that has represented ITT.

Senator KENNEDY. OK. Would you continue?

Mr. KLEINDIENST (reading):

We therefore believe that the Department should not take such a step without all of the usual precautions that precede a recommendation for new legislation. If the antitrust laws were to be expanded by legislation, rather than by litigation, the Department's views would, in the first instance, be collected by the Deputy Attorney General and then cleared with the Bureau of the Budget which would give all of the other interested Federal departments an opportunity to comment.

I might say there parenthetically that that is a correct statement of our procedures. Judge Walsh was a former Deputy Attorney General and was familiar with those procedures.

We believe that any major expansion of the antitrust laws should be accompanied by these steps whether the expansion is by litigation or by legislation. It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers, all have some views with respect to the question under consideration.

Senator KENNEDY. Well, now, this is the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council, all have some views?

Mr. KLEINDIENST. That is what he said.

Senator KENNEDY. Do you have any information? Were they contacted by ITT?

Mr. KLEINDIENST. I don't know. I didn't talk to him about this case.

Senator KENNEDY. This is what Mr. Walsh mentioned to you.

Mr. KLEINDIENST. Yes, that is what he said.

Senator KENNEDY. What do you think he meant by that?

Mr. KLEINDIENST. I don't know what he meant by that. I think you would have to ask him. I wouldn't want to speculate about it, Senator Kennedy.

Senator KENNEDY. All right.

Mr. Rohatyn, do you have any idea of what the meaning of that would be?

Mr. ROHATYN. Sir, I have never seen Judge Walsh's letter.

Mr. KLEINDIENST (continuing to read).

Ordinarily, I would have first seen Dick McLaren, but I understand that you, as Acting Attorney General, have already been consulted with respect to the ITT problem—

Senator KENNEDY. Let me ask you this. What did he mean by that, you had been consulted?

Mr. KLEINDIENST. I don't know what he meant by it.

Senator KENNEDY. He said he had understood that you had been consulted.

Now, you hadn't been consulted. I understand your testimony is you hadn't other than your conversation with Ryan?

Mr. KLEINDIENST. I didn't talk to Mr. Ryan about this. This is the *Grinnell* case. I don't know what he meant.

Senator KENNEDY. But you don't have any idea what he was talking about here?

Mr. KLEINDIENST. No, I do not. You will have to ask him what is the basis of that understanding.

* * * and that the Solicitor General also has under consideration the perfection of an appeal from the District Court decision in the *ITT-Grinnell* case.

It is our hope that after reading the enclosed memorandum—

Senator KENNEDY. If I could, since we are on our time and I have a question on this—as I understand, you took the call from Mr. Walsh?

Mr. KLEINDIENST. I did.

Senator KENNEDY. Then you asked him to send this letter, is that correct?

Mr. KLEINDIENST. Well, no, I thought——

Senator KENNEDY. Let me ask, when did he call?

Mr. KLEINDIENST. The judge told me yesterday that he called on the morning of April 16, that Friday morning. I didn't recall that. I talk to Judge Walsh maybe two or three times a week and that is because he is chairman of the standing committee on the judiciary of the American Bar Association, through whom we process the recommendations for Federal District and court of appeals judges. His calling me was not unusual, because I am talking to him all the time. But he said that he called me on that morning. I don't recall that.

Senator KENNEDY. I am afraid my time is up.

Mr. KLEINDIENST. Do you want me to finish reading the letter?

May I, Mr. Chairman?

Senator ERVIN. I believe I will assume the authority to let you finish reading the letter, notwithstanding that the time of the Senator from Massachusetts has been exhausted.

Mr. KLEINDIENST. Thank you, Mr. Chairman.

It is our hope that after reading the enclosed memorandum, which is merely a preliminary presentation, you and Dick McLaren and the Solicitor General would be willing to delay the submission of the jurisdictional statement in the *Grinnell* case long enough to permit us to make a more adequate presentation on this question. ITT of course will join in any application for an extension of time. It is obvious that this case cannot be heard at this term of court and it would therefore seem that a delay of a relatively short period would not be harmful to the public interest. With kindest regards,

Sincerely yours,

LAWRENCE E. WALSH.

Senator ERVIN. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

Judge McLaren, in your statement this morning, you described the circumstances under which you attained the services of Mr. Ramsden—I think that is his name.

Judge McLAREN. Yes, sir.

Senator MATHIAS. Did I understand that your first acquaintance with him and with his work was as a White House Fellow?

Judge McLAREN. He was in the Government at that time and we used him to make the studies for us in connection with the settlement of the Ling-Temco-Vought case and I think this would have been the year before—I have guessed it.

Senator MATHIAS. But he was a White House Fellow? By that I don't mean that he was in the White House, but he came in in that program and they are scattered around through the Government?

Judge McLAREN. I think he had been, yes, sir.

Senator MATHIAS. And you had used him while he was on the Government payroll in the LTV settlement, is that right?

Judge McLAREN. Well, whether he was on as consultant at that time or full-time, I am just really not sure. But he was paid to do a job for us in analyzing the financial implications of the LTV case. That was another hardship case where we were afraid that if we were successful in our case, LTV would go down the drain and I guess everybody who follows the stock market knows it almost did.

Senator MATHIAS. Well, now, while you had him in a consultant status in the LTV case, had you occasion to talk to him personally?

Judge McLAREN. Yes, sir. He came in and he met with me and the staff. I specifically remember one occasion where he had a long meeting in my conference room and went over all the pros and cons and so on.

Senator MATHIAS. Well, now, since you were personally acquainted with him, why did you have any question about simply picking up the phone and calling him wherever he was and hiring him to do the job on the ITT case?

Judge McLAREN. Well, I think that I simply thought at the time that Peter Flanigan had gotten him for me before and I asked Peter to get him for me again. He knew, I would hope, where he was. There wasn't any particular reason I didn't do it directly.

Senator MATHIAS. That is all.

The CHAIRMAN (presiding). I want to place in the record the letter to Mr. Kleindienst from Judge Lawrence E. Walsh, a copy of which I received last night.

Mr. KLEINDIENST. Mr. Chairman, here is the original if you want to put that in the record, together with the memorandum that accompanied it.

(The letter and memorandum follow:)

DAVIS POLK & WARDWELL,
New York, N.Y., April 16, 1971.

Hon. RICHARD G. KLEINDIENST,
Deputy Attorney General,
U.S. Department of Justice,
Washington, D.C.

DEAR DICK: As I told you over the telephone, our firm has represented ITT, as outside counsel, ever since its incorporation over fifty years ago. A few weeks ago, Mr. Harold S. Geneen, Chairman and President of ITT, asked me to prepare a presentation to you as Acting Attorney General and, through you, to the National Administration on the question of whether diversification mergers should be barred and, more specifically, urging that the Department of Justice not advocate any position before the Supreme Court which would be tantamount to barring such mergers without a full study of the economic consequences of such a step.

To us this is not a question of the conduct of litigation in the narrow sense. Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department. We therefore believe that the Department should not take such a step without all of the usual precautions that precede a recommendation for new legislation. If the antitrust laws were to be expanded by legislation, rather than by litigation, the Department's views would, in the first instance, be collected by the Deputy Attorney General and then cleared with the Bureau of the Budget which would give all of the other interested federal departments an opportunity to comment. We believe that any major expansion of the antitrust laws should be accompanied by these steps whether the expansion is by litigation or by legislation. It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisors all have some views with respect to the question under consideration.

Ordinarily I would have first seen Dick McLaren, but I understand that you, as Acting Attorney General, have already been consulted with respect to the ITT problem and that the Solicitor General also has under consideration the perfection of an appeal from the District Court decision in the *ITT-Grinnell* case.

It is our hope that after reading the enclosed memorandum, which is merely a preliminary presentation, you and Dick McLaren and the Solicitor General would be willing to delay the submission of the jurisdictional statement in the Grinnell case long enough to permit us to make a more adequate presentation on this

question. ITT of course will join in any application for an extension of time. It is obvious that this case cannot be heard at this term of court and it would therefore seem that a delay of a relatively short period would not be harmful to the public interest.

With kindest regards,
Sincerely yours,

Ed
Lawrence E. Walsh.

APRIL 16, 1971.

MEMORANDUM FOR THE DEPARTMENT OF JUSTICE IN SUPPORT OF A COMPREHENSIVE REVIEW OF ADMINISTRATION POLICY TOWARD DIVERSIFICATION BY MERGER

This memorandum is submitted to demonstrate that the Department of Justice should initiate a comprehensive, Government-wide review of the national interest implications of diversification by merger before making any argument to the United States Supreme Court which, if accepted by the Court, would have the effect of banning all significant mergers and diversification. We submit that such a sweeping ban should not be adopted as the policy of the Administration and the Nation without the most careful review. Such a review would be undertaken as a matter of course before the Administration proposed legislation to Congress which would have the same effect. We submit that such a review would show that a ban on significant diversification mergers would sacrifice vital national goals—economic growth and full employment, American competitiveness in world markets, and the balance of payments—to the unrealized fear of dangers to competition. The review should avail itself of the insights of all interested Government agencies, as well as of economists, businessmen, lawyers, and other experts outside government.¹

I

A BAN ON SIGNIFICANT MERGERS AND DIVERSIFICATION WOULD INJURE VITAL NATIONAL INTERESTS

The most important economic problem facing the United States today is the challenge to increase its economic efficiency in order to remain competitive in increasingly rigorous world markets. This challenge must be met if the United States economy is to continue its long-term growth at reasonably full employment. The challenge of remaining competitive in world markets is not something which Government policy can meet unaided, and it is not something which can be met by a simple, one-shot effort. Staying competitive will require a sustained national effort, and increasingly it will require that every economic resource the Nation possesses be utilized to the best advantage.

Diversification by merger is the most important guarantee that every economic resource of the Nation will in fact be used to the best advantage. A nondynamic industry must not be protected from constructive new forces. Through diversification, scarce management skills, additional resources of capital and know-how, and, most important, the will and ability to plan for growth, can be brought to bear in new industries. These inputs are essential if an industry is to remain competitive. If an industry has ceased to generate these inputs itself—as many industries, especially concentrated industries, have—they must be introduced from outside. There are only two ways of introducing these essential inputs from outside: wholly new entry through internal development and diversification by merger. As a practical matter, completely new entry into an established industry is feasible only for (a) firms in closely related industries which have great similarities in

¹ The Department's appeal from the decision of the District Court in *ITT-Grinnell* raises a substantial danger that the Supreme Court will issue a decision broadly condemning diversification mergers, in view of the District Court's finding that the anticompetitive effects alleged by the Department were not supported by the facts. This is particularly true of the Department's contention that the mere possibility of reciprocal dealing (purchasing from customers) is enough to condemn a merger under Section 7 of the Clayton Act. This contention, if accepted by the Supreme Court, would bar almost any significant acquisition by a company with many suppliers.

We urge the Department, in order to make possible a review of Administration policy before national policy is irrevocably fixed by the Supreme Court on antitrust grounds alone, not to perfect its appeal in *ITT-Grinnell* by filing the Jurisdictional Statement which is due on April 20, 1971. If, after this review, the present policy of the Department of Justice regarding mergers and diversification were reaffirmed, there would be numerous other opportunities to present it to the Supreme Court, of which the *ITT-Candeen* and *ITT-Harford* cases are only two. Moreover, if actual anticompetitive effects should ever develop from an ITT acquisition, the acquisition could be attacked when these effects developed, under the *du Pont-GM* decision of the Supreme Court.

production and marketing techniques, so that the vital business "know-how" is readily available and transferable to the new field, or to employees of established firms in the industry who use their know-how to set themselves up in business as competitors of their former employers. For any other types of persons or firms interested in entering a completely new industry, the lack of detailed industry know-how, combined with the high start-up costs of totally new products and marketing channels, is almost always prohibitive.

Thus diversification by merger is often the only effective means of stimulating new competitiveness in established industries. The record shows that diversification mergers have served this purpose. ITT itself is a case in point. ITT stimulates the profit growth of each of its profit centers by helping them develop short-range and long-range plans for growth and by assisting them through a central management staff of over 1,000 industrial and operations specialists. Since 1960, ITT's earnings have grown at a steady compound rate of 11% a year. The improved competitiveness of the companies ITT has acquired is illustrated by the growth and development of subsidiaries like Avis and Sheraton. ITT, in other words, has been able to apply modern management skills in such a way as to increase very substantially the efficiency and competitiveness of the companies it acquired. Many other companies which have diversified substantially by merger, such as Textron, Litton, TRW, Transamerica, Beatrice, and American Home Products, have also been successful in substantially increasing the competitiveness of the companies they acquired.

Increased economic efficiency is not the only benefit realized from mergers.

For example, individual enterprise and ability are utilized and rewarded much more effectively by companies built around modern management techniques than in many long-established companies.

The entrepreneurial enterprise which leads to the founding of new companies is stimulated far more effectively if an active market exists for the equity interests which the entrepreneur has built up in a successful company. The 3,751 acquisitions which occurred in 1970, the great bulk of which were diversification mergers, indicate the importance of this "capital market" for businesses.

Diversification is also essential to permit a company to hedge or insure against the risks inherent in business operations. Without diversification, a decline in business in one industry can have devastating results, as the downturn in the aerospace business has had in Southern California and the State of Washington.

ITT also illustrates the vital importance of such diversification to the Nation's balance of payments. Prior to World War II, ITT was a United States-owned telephone operating and manufacturing company with substantially all of its operations abroad. Most of its properties were expropriated or destroyed during the war. ITT has now rebuilt a substantial position abroad, particularly in Europe and Latin America. It employs over 200,000 persons abroad, and is the third largest corporate contributor to a positive United States balance of payments, remitting over \$300 million a year to the United States economy.

However, the fundamental risks involved in significant foreign operations cannot be ignored. For example, ITT's \$150 million investment in the Chile Telephone Company (only two-thirds of which is covered by government insurance purchased by ITT) is facing possible nationalization by the new Marxist government of Chile. Experience has shown that any compensation is likely to be small, paid only in local currency, and late. ITT has not yet received any compensation for its Cuban subsidiary, which was expropriated in 1960.

These risks of foreign operation must be balanced by a stable economic base in the United States. All of ITT's major international competitors, such as Siemens of Germany, Ericsson of Sweden, Mitsubishi, Hitachi, and Nippon Electric of Japan, and Northern Electric of Canada, have solid domestic bases in their home countries as well as active governmental support for their extensive export sales. This need for a stable domestic base is the basic reason for ITT's diversification program. If this diversification into the United States economy is prohibited, the ability of ITT and other United States companies to assume the substantial risks of doing business abroad in a competitive world market will be substantially impaired.

These national interest questions, while of course they affect ITT vitally, do not affect ITT alone. On the contrary, a ruling banning all significant mergers and diversification would have broad repercussions throughout the economy.

We recognize that the points we have made about the national interest implications of mergers and diversification are not uncontroversial. We earnestly submit, however, that they should not be dismissed as special pleading. The report of President Nixon's Task Force on Productivity and Competition (the "Stigler

Report"), after reviewing the issues of conglomerate mergers, flatly concluded: "Vigorous action on the basis of our present knowledge is not defensible." Like views have been expressed by men who have long been identified with vigorous enforcement of the antitrust laws.² So far as we are aware, this conclusion is shared by most scholars in the field of antitrust law.

We respectfully suggest that it is timely for the Department and the Administration as a whole to review their policy toward mergers and diversification.

II

THERE SHOULD BE A COMPREHENSIVE REVIEW OF ADMINISTRATION POLICY TOWARD MERGERS AND DIVERSIFICATION

The Stigler Report strongly recommended a comprehensive review of national policy toward mergers and diversification:

"We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon."

The need for such a review is even more pressing today than it was when the Stigler Report recommended it, because of the danger that the *ITT-Grinnell* appeal to the Supreme Court will result in judicial legislation of a blanket condemnation of all significant mergers and diversification. Because the factual assumptions underlying the Department's anti-merger policy were not established in that case, it would seem appropriate to await another case in which the facts show a real probability of substantial adverse effects on competition, rather than move to a more radical position on the law to compensate for a failure of proof.

This comprehensive review of Administration policy should involve the Departments of Commerce, Labor, and the Treasury, speaking for the business economy, the interests of employees, and the balance of payments, and the Council of Economic Advisors, representing the national commitment to economic growth and full employment, as well as the lawyers in the Department of Justice who have specialized in this field. Such a full and balanced review of merger policy can only be carried out within the Executive Branch, because the Supreme Court has made clear that in merger cases it will look to the antitrust laws alone, and will disregard any economic or other public benefits resulting from the merger.

Such a balanced, Government-wide review is needed to insure that the policy which results is truly in the national interest. Such a Government-wide review would be undertaken as a matter of course before the Administration sought a comprehensive statute from Congress which would ban all significant mergers and acquisitions. Such a review is equally necessary before the Department of Justice seeks to obtain such a prohibition through a Supreme Court decision which would have exactly the same immediate impact as a statute and would be even more difficult to modify as experience showed its unwisdom.

CONCLUSION

For the reasons given above, a comprehensive, Government-wide review of Administration policy toward mergers and diversification should be undertaken. Respectfully submitted.

LAWRENCE E. WALSH,
FREDERICK A. O. SCHWARZ,
GUY M. STRUVE, (Of counsel),

Attorneys for International Telephone & Telegraph Corp.

Senator KENNEDY. The Petersen letter that alleges that Dr. Liszka was investigated for overcharging in Medicare, that there is a case against—

The CHAIRMAN. That will be admitted in the record.
(The Petersen letter referred to follows:)

² For example, Professor Donald F. Turner has stated that a ban on leading firm acquisitions would make no significant contribution to the preservation of competition, but would limit one of the main avenues, and in many cases the only avenue, for improving the economic performance of inefficient companies.

DEPARTMENT OF JUSTICE,
Washington, March 6, 1972.

HON. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: In connection with the testimony of Dr. Victor L. Liszka before your Committee today, I believe there are certain matters that should be brought to your attention.

On January 12, 1972, the Office of the Regional Director, Department of Health, Education and Welfare, Philadelphia, Pennsylvania, referred a proposed prosecution of Catherine V. Green, M.D., for violation of Section 201 of the Social Security Act to the Office of the United States Attorney for the Eastern District of Virginia in Alexandria, Virginia. Dr. Green is the wife of Dr. Victor L. Liszka and it appears that they are in a joint practice together in Arlington. The referral resulted from an investigation of allegations that Dr. Liszka had defrauded the Social Security Administration with respect to certain Medicare payments. As a result of the investigation, however, it was determined by the Social Security Administration that Dr. Liszka was not responsible for the excess payment involved.

I am informed by the United States Attorney, Mr. Brian P. Gettings, that his office revived and reconsidered the allegations against Dr. Liszka. However, after Dr. Liszka submitted to a detailed interrogation, under oath and stenographically recorded, in the presence of his attorneys, on February 22, 1972, it was concluded on that date that Dr. Liszka was innocent of any wrongdoing. The U.S. Attorney further concluded that the original recommendation of the Social Security Administration was justified and that only the evidence against Dr. Green need be considered by the Grand Jury.

I am further advised by Mr. Gettings that the Federal Grand Jury sitting in Alexandria, Virginia, during the week of March 13, 1972, will consider the evidence against Dr. Green to determine whether an indictment is warranted.

For your additional information, the case referred to herein is of a type which is referred directly to the appropriate United States Attorney and the national office of the Department of Justice ordinarily does not become involved in the absence of a request for assistance by the U.S. Attorney. There was, of course, no such request in this case. The records of the Department of Justice reflect only that the fraud Section of the Criminal Division, upon receipt of a copy of the agency's referral letter to the U.S. Attorney, routinely forwarded a draft indictment to the U.S. Attorney for his assistance and consideration on February 11, 1972.

Mr. Wood and Mr. Duffner, who met with Dr. Liszka on Friday afternoon, March 3, 1972, and Sunday evening, March 5, 1972, in both instances at the request of Dr. Liszka, have advised me that no reference whatsoever was made directly or indirectly in either of those conversations to any such personal problem which Dr. Liszka or his wife might have. Dr. Liszka explained to them only that he was voluntarily coming to the Department to try to help correct what he considered to be an injustice being done as he had been a witness to a conversation which he did not consider had been correctly reported in the press. Further, he explained, in connection with the Friday conversation, that he had requested to come to the Department because of his concern for the welfare of Mrs. Beard whose whereabouts were then unknown, although to his knowledge the FBI was attempting to locate her. He added that he thought he might be helpful in this regard. Dr. Liszka was completely unknown to both Mr. Wood and Mr. Duffner prior to March 3, 1972. Further, in the Sunday evening conference Dr. Liszka advised he had been contacted by the Committee and planned to appear and testify the next day.

This information is being supplied at the request of Mr. Kleindienst.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General.

Senator COOK. Mr. Chairman, I would like to request that copies of the letter that has just been read by Mr. Kleindienst and the letter the Senator has reference to be made and that they be given to the press.

Mr. KLEINDIENST. I have turned over to the committee the original letter and the original memorandum of law that accompanied it, Mr. Chairman.

The CHAIRMAN. Senator Tunney?

Senator TUNNEY. Mr. McLaren, as I understand your testimony, the reason that you selected Mr. Ramsden to do this financial report was because you had a conversation with Mr. Flanigan, although you don't have an independent recollection of the conversation?

Judge McLAREN. No; that is not right, Senator. I selected Mr. Ramsden because I had had a satisfactory experience on a similar type job a year earlier in another case in which we had had a hardship situation. Then to get him, I simply got in touch with Mr. Flanigan's office, presumably with Mr. Flanigan himself, and said, "We have got another situation in this case like we had in LTV, I'd like to get hold of Ramsden, can you get him for me?"

Senator TUNNEY. Why didn't you get hold of Mr. Ramsden yourself?

Judge McLAREN. I don't really know. I don't know that I knew where he was. There is just no particular reason I know of, Senator Tunney.

Senator TUNNEY. Did you discuss why it was that you wanted to get hold of Mr. Ramsden with Mr. Flanigan?

Judge McLAREN. I am sure I told him we had a similar situation to LTV and I told him what I wanted to do. In other words, Peter was going to act as a conduit and pass along to Ramsden, here is what McLaren wants you to do.

Senator TUNNEY. Did you discuss with Mr. Flanigan the outline of the antitrust suit against ITT when you asked for Mr. Ramsden?

Judge McLAREN. I doubt it. There wasn't any question of the antitrust suit, Senator Tunney. We thought we could win that. The problem was could we afford to win it in the public interest, that was it, and have the relief we had originally demanded. Or was the impact going to be too great.

Senator TUNNEY. As I understand your testimony, you don't have any independent recollection of the conversation with Mr. Flanigan now?

Judge McLAREN. That is correct.

Senator TUNNEY. So it is conceivable that you could have discussed with him the outline of the ITT antitrust suit?

Judge McLAREN. Not really. I mean the complaint was out, was public knowledge, and I had just assumed probably he would know about it.

Senator TUNNEY. Did you know a good deal about Mr. Ramsden's experience at the time that you made the request?

Judge McLAREN. No; I just knew that we had been well satisfied with his work in the LTV case.

It is a different kind of work, incidentally, than economists do. We had plenty of economists, but as I discussed here the other day, we didn't have very many people that were qualified to do the financial hardship kind of study that we needed done.

Senator TUNNEY. What kind of experience does Mr. Ramsden have?

Judge McLAREN. I think he is primarily an investment analyst, a fellow that looks at a company and considers its advantages and disadvantages, its strengths and weaknesses, and decides whether its stock is sound and that kind of thing.

Senator TUNNEY. Is he about the best there is in the country?

Judge McLAREN. Mr. Ramsden?

Senator TUNNEY. Yes.

Judge McLAREN. I am sorry. I don't have that much knowledge.

Senator TUNNEY. But on the other hand, you have testified that based upon Mr. Ramsden's recommendation, you decided that a settlement would be appropriate. So, you must have had a considerable amount of confidence in his experience and background?

Judge McLAREN. Senator, I think what I testified was that Ramsden's report was one factor. Another factor was the ITT presentation itself. A third factor was Mr. MacLaury's reaction to the ITT presentation and his knowledge in this financial field. And a fourth factor was my own reaction.

Senator TUNNEY. You mean the Treasury's? The man from the Treasury?

Judge McLAREN. Yes, right.

Senator TUNNEY. How much was and how detailed was the information that Mr. McLaury gave you?

Judge McLAREN. Mr. McLaury gave me information on the telephone. It was not detailed at all. It was, I think, not too long after the time that he met with us, he moved out to Minneapolis and he is head of a Federal Reserve bank out there. I don't think he got to make as much of a study as he had anticipated making, but he called me up and said that they had been over the thing and that he found no fault with it. He was sure, without trying to quantify the thing, that there would be a very serious impact on ITT of the Hartford divestiture.

Senator TUNNEY. Did he do a detailed study?

Judge McLAREN. I don't know to what extent he did this study. He analyzed what they had done.

Senator TUNNEY. How much time did Mr. Ramsden spend on the study that he did, do you know?

Judge McLAREN. I have no independent knowledge of that. I understand something was said over the weekend or he was reported to have said that he spent about 3 days on it.

Senator TUNNEY. How many people did he talk to, do you know, in making that evaluation?

Judge McLAREN. I have no idea.

Senator TUNNEY. The combined assets of the companies that were under consideration in this antitrust suit is about \$6 billion dollars? Is that not true?

Judge McLAREN. Probably ITT's total assets were somewhat in that neighborhood. If that is a correct figure, I would accept it.

Senator TUNNEY. How much time did you spend and did members of the Antitrust Division spend in preparing this case for trial, or the various cases for trial?

Judge McLAREN. Well, we had staffs on all three cases from 1969 up until the cases were settled in 1971. I had three men, particularly, that were very familiar with it—Mr. Hummel, who is, I would say, a 25- to 30-year veteran of the Antitrust Division and Deputy Director of Operations. He's got a background in economics, including a graduate year at Brookings Institute 2 or 3 years ago. I had a great deal of faith in him and he kind of headed up the effort.

Under him, I had two very experienced, very able antitrust career men who were on—well, three, really, who were on *Canteen*, *Grinnell*,

and *Hartford*. I had great confidence in that staff. That is really the backbone of it—representative of the backbone of the Antitrust Division.

Senator TUNNEY. Through all this time and all this effort that went into preparation of the suit, I am interested why it was that you did not delve a little bit more into the experience and the background of Mr. Ramsden and his ability to make this kind of a financial evaluation. After all, many thousands of hours had gone into the preparation of the case and it is my understanding that the financial advice that you got, that you relied on, was Mr. Ramsden's report. I think he was 33 years old then—34, 35 years old.

Judge McLAREN. Let's keep the record straight. It was one of four things.

Senator TUNNEY. All right, one of four things, but a very important thing. Then we had Mr. MacLaury's statement that he orally—or your statement that Mr. MacLaury orally and informally talked to you about the case.

Did you speak to Treasury?

Judge McLAREN. And I had my own 25 years of experience.

Senator TUNNEY. Did you speak to Treasury?

Judge McLAREN. I spoke to Mr. MacLaury only.

Senator TUNNEY. Only Mr. MacLaury?

Judge McLAREN. As far as I remember, yes.

Senator TUNNEY. Did you speak to Mr. Ramsden?

Judge McLAREN. No, I don't think so.

Senator TUNNEY. Why not?

Judge McLAREN. I don't recall. He was asked to make the report and in due course, the report came back.

After all, Mr. Flanigan was in the investment kind of community. I had great respect for his judgment. His judgment of who was a good man to do this job I would be glad to rely on. After all, this is all one government and we were both working for it. I think that I was entirely justified to ask a man who is skilled in the field to make a recommendation of somebody that he would have confidence in.

The CHAIRMAN. Your 10 minutes are up.

Senator Gurney?

Senator GURNEY. Mr. McLaren, I wonder if you would go back to Mr. Elzinga?

What was his role?

Judge McLAREN. He was a special economics assistant, Senator.

Senator GURNEY. How long had he been with you?

Judge McLAREN. Since about September of 1970. You see, I inherited the situation where the Assistant Attorney General each year has a special economics assistant. It has been, I think, a very worthwhile thing for the head office, so to speak, and a very worthwhile thing for the young men that have come in. Mr. Elzinga and I had, I thought, a very fine relationship up until I heard his statement of last weekend.

Senator GURNEY. Well, he was there for just a short time, then?

Judge McLAREN. Yes, sir.

Senator GURNEY. A year, is that right?

Judge McLAREN. A little less than a year, yes.

Senator GURNEY. Would you say his job was sort of an intern more than it was a career or an adviser in economics?

Judge McLAREN. Well, no, not an intern. I wouldn't say. Senator. He was kind of a special assistant and we put him on projects. He worked with top staff, including myself.

Senator GURNEY. How old was he?

Judge McLAREN. I think in his very late twenties or very early thirties.

Senator GURNEY. How much experience had he had outside of his academic career?

Judge McLAREN. I am afraid I don't know the answer to that, Senator.

I want to emphasize that I hold nothing against Mr. Elzinga. I understand that Mr. Susman, who is on Senator Kennedy's staff, interviewed Mr. Elzinga both before and after my testimony last week, and it is pretty plain that he did not tell him what I had testified. At least, Mr. Elzinga's statement over the weekend was made under the misapprehension that there had been no staff people working on this case. Since he made his statement on that assumption, I can only assume that he was somewhat poisoned over the weekend against me and I resent it very much.

Senator GURNEY. Where is he now; did you say? Is he teaching again? He is back teaching?

Judge McLAREN. He is in the Economics Department of the University of Virginia.

I might say, Senator, that about the middle of January, I had a very fine, warm letter from Mr. Elzinga congratulating me on my appointment. If he thought I was a crook then, he certainly took a funny way of showing it. Something must have happened between the 10th or 11th of January and this blast over the weekend. I will be glad to discuss that with Mr. Susman someday.

Senator GURNEY. Was Mr. Elzinga—

Senator KENNEDY. Since my name and my staff was raised, could I—

Senator GURNEY. I wonder if you could let me finish and then you can go on your time with your name and your staff.

Was Mr. Elzinga in your department when the LTV case was under consideration?

Judge McLAREN. Gee, I can't answer that, Senator. I think LTV was pretty well wound up by midyear or fall of 1970, but I am just not sure. That would have been about the time Mr. Elzinga came with us.

Senator GURNEY. At any rate, he never made any great protest about the study that Mr. Ramsden did on LTV, never mentioned anything to you about that; did he?

Judge McLAREN. Not that I recall, Senator.

Senator GURNEY. And as I understand your testimony as far as his role, it is that he was an economist and this was really not what you would call an economic problem, but a financial analysis problem; is that right?

Judge McLAREN. That is correct; yes.

Senator GURNEY. I don't have any further questions.

Judge McLAREN. And I might add that Mr. Elzinga is a micro-economist, which is the kind of man you do use in bringing these suits. They analyze markets, effect on competition, and that sort of thing. Although I had great respect and fondness for him, I don't think that

he was particularly qualified—I think he would say himself he was not particularly qualified—in the stock market type end of this and the financial end of that.

Senator GURNEY. I am not sure about that. I heard him on television, too, and he had a mighty good opinion of himself. I think he would be qualified for anything in his own opinion.

That is all.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Mr. Chairman, I was listening to Mr. McLaren's comments. As I understand it, Mr. Susman talked to this man in the evening. But I am familiar with what Mr. Susman stated to him and the response. I am rather surprised that Mr. McLaren would feel that a disservice was done to him. I don't believe it was so. But I want to just make the record clear on it.

Mr. Elzinga told my staff that he had not heard of the ITT settlement until it was announced and had not heard of any outside financial economic expert until Mr. Susman informed him of that. Mr. Susman also talked a while with Mr. Cantor and Mr. Eads, who, as I understand it, are two assistants of yours or were two assistants of yours?

Judge McLAREN. Mr. Cantor was my special assistant, a lawyer, throughout the time I was in the Antitrust Division. Mr. Eads was my last special assistant economist, also a fine young man.

Senator KENNEDY. Well, it is my information that neither of them had heard of any outside economists or financial experts involved.

Judge McLAREN. Well, Senator, let me put that in perspective. When we go into one of these things on a "need to know" basis, I picked a staff, I brought them in, I told them what the problem was, and they did not discuss it outside that group except as they would come to me or my deputy and get permission to do it. The reason was that, for example, if word leaked out that we were engaged in trying to develop a settlement plan in ITT, this would leak out to professionals, to insiders, and the ordinary guy is going to take a licking. He is out buying ITT stock, these guys are selling on inside information. We were very careful after this happened to us early in 1969 to try to set up a plan that would prevent that kind of leakage and prevent insider advantage. We used it all the way along, not just on this case.

Senator KENNEDY. I want to really return to other matters when my time comes up, but I suppose the point that I find somewhat distressing is why you would have a greater sense of confidence in terms of security about the importance of this case with someone whom, as you have mentioned here, you have only had contact with in the previous case, why you would have a greater sense of confidence in him than men you had worked with over a considerable period of time?

Judge McLAREN. Well, that is easy. We didn't have anybody in the department that I felt could make that kind of analysis. This is a financial, not an economic analysis.

Senator KENNEDY. That is right, and you have mentioned that before.

Judge McLAREN. And I relied on Mr. Flanigan.

Senator KENNEDY. And why you would feel that even your own—you have also commented here that you were concerned about this leaking out to other insiders, or inside information.

Judge McLAREN. That is right.

Senator KENNEDY. I think that is very legitimate. But why you feel that it might not leak out through Mr. Ramsden, why you had so much confidence in him rather than the men that have worked with you.

Judge McLAREN. Well, Senator, we had done this the same way on LTV and he had been reliable there.

Senator KENNEDY. I don't know whether I am on the rest of my time or whether you are going back, Mr. Chairman.

I think it was just a matter, as I understand it, since my name was mentioned and my staff, that I think the Chair gave me a chance to respond and clear that up. So, I think the time goes back.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. Judge McLaren, was there not, at the time you took the position at the head of the Antitrust Division of the Department of Justice, wasn't there a great deal of difference in legal opinion in anti-trust, among antitrust lawyers as to whether or not these diversified conglomerates could be reached under section 7 of the Clayton Act?

Judge McLAREN. Yes, sir, there was a very great difference. The policy within the Antitrust Division had been to the effect that you couldn't reach a lot of these conglomerate anticompetitive mergers under section 7, and one of the first things I did there was to sit down with the staff and try to show them why I thought we could and should move ahead under section 7 and attack some of them. And that is what we did.

Senator ERVIN. There was a feeling among some legal circles that there would have to be further legislation on this point, additional legislation on this point, wasn't there?

Judge McLAREN. That is right. That was the opinion of both Mr. Turner and Mr. Zimmerman, as I understand it, the two previous heads of the Antitrust Division.

Senator ERVIN. I probably, from my North Carolina legal language, tend to use a little different terms. We use on the question of injunctive process the term of restraining order, temporary restraining order, which was an order procured on ex parte application. Then we use a term for interlocutory injunction which was obtained after the temporary restraining order and after a hearing, and then, of course, a permanent injunction at the end of the suit.

Now, which one of these processes do you apply the term "preliminary injunction" to?

Judge McLAREN. Well, we would go in first on a temporary restraining order. Under the Federal rules, that can only be in effect, I think, for 10 days. During that period, you don't have to make too much of a showing to a Federal judge to give you that much time. Then you go into your real hearing on the thing and maybe that lasts for a week or 2 weeks or 3 weeks. Then you get your preliminary injunction and that stays in effect, if you get it, until the basic case is decided.

Senator ERVIN. And some judges are very reluctant, are they not, to grant preliminary injunctions certainly because they are interlocutory in nature and not appealable ordinarily?

Judge McLAREN. Well, almost everything is appealable. But under the expediting arrangement, the Division cannot get an appeal.

Senator ERVIN. So these things are not easy to get?

Judge McLAREN. No, and I felt the Antitrust Division would get a lot more serious and attentive hearing from the Federal judges if they knew these matters could be appealed.

Senator ERVIN. Having been a judge, I know it is always a consolation to a judge to know his errors can't be reviewed very speedily.

Judge McLAREN. I think I am about to find that out, Senator.

Senator ERVIN. That is all. Thank you.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. I have no questions at this time.

The CHAIRMAN. Senator Hart?

Senator HART. In my last 10 minutes, I refrained from asking one additional question to clarify the record on matters that have been recorded in the press because I did not have possession of the press clippings, and I did not want to ask it if my memory as to its contents was incorrect. I now have it.

Let me ask. It is a followup on the series of questions I asked about Mr. Bobst.

The matter was referred to the Federal Trade Commission. You have denied that you ever threatened to resign over it and you have no idea of the basis for Mr. Bobst's statement that you did intend to quit, threaten to quit.

Mr. Bobst also was reported in the press to have said that Peter M. Flanigan received and interviewed the Republican members of the Federal Trade Commission with respect to the referred case—namely, Warner-Lambert. Does anyone know anything about the basis for that?

Mr. KLEINDIENST. I don't.

Judge McLAREN. I have heard casual conversation, Senator, that there is nothing to it. I can't really pin down the time, but I remember a conversation in which somebody pointed out that Mr. Bobst is semiretired, he is perhaps more out of touch with both business and government than would seem from some of the articles that we have read about him.

Senator HART. Are you really gently suggesting that he is out of touch with reality?

Judge McLAREN. No, sir, I am not suggesting that. I am suggesting that if he were actually pinned down, he would say, well, he was kind of speculating, that he is really more or less retired and wasn't that much in touch with the thing.

Senator HART. We are just trying to find out whether he was regarded as competent to write a campaign contribution check in 1972.

Mr. KLEINDIENST. I think he was.

Judge McLAREN. Senator, I am glad if it sounded like I was casting any aspersions that you picked me up. I certainly didn't mean to.

Senator HART. And with reference to the decision not to obtain from the several staff people in the Justice Department, economist and trial counsel, their evaluation either of the memorandum provided from the Wall Street man—what is his name—Ramsden or to involve them in the financial discussions on the terms of the consent decree, you wanted it limited to a need-to-know basis and you had concern about leakage. And as far as the economists were concerned, this was largely a financial matter. But the consequences on market, and I take it that is what we mean by financial matters, is within the expertise of the Securities and Exchange Commission and regularly

they make such estimates and analysis. Would it not have been appropriate to at least obtain their evaluation of the outsiders' memorandum?

Judge McLAREN. I must say, Senator Hart, it simply never occurred to me. I don't know whether they would or would not. I would be a little surprised if they would give any advice either on my problem or on Mr. Ramsden's memo.

Senator HART. I will yield the remainder of my time to others on the committee.

The CHAIRMAN. Senator Cook?

Senator COOK. Judge, as I understand the circumstances, to get it in perspective, on April 10, 1969, ITT and Hartford entered into an agreement for merger. On August 1, 1969, the Justice Department filed a suit asserting that the transaction violated section 7 of the Clayton Act. Government application for injunction was denied on October 21, 1969.

Now, in November, the merger received the approval of the tremendous majority of the Hartford stockholders, is that correct?

Judge McLAREN. I think this is—this date sounds about right, Senator. I wouldn't have them in my head.

Senator COOK. Thereafter, the insurance commissioner of the State of Connecticut held that up because he felt, rather than have an outright sale, there should be a share for share swap and that ITT should acquire all of Hartford and that for this, ITT should be required to issue stocks in ITT to Hartford stockholders.

Now, you may know the answer to that and our director may know the answer to that, but I think that is correct. Is that true?

Judge McLAREN. That is generally as I recall it, yes, sir.

Mr. ROHATYN. Yes, sir; that's correct, Senator.

Senator COOK. So in principle, the insurance commissioner of the State of Connecticut agreed that the merger could occur but that it must occur on a share-to-share basis or whatever fractional shares would have to be accommodated for the benefit of the then value of the respective stocks, is that true?

Mr. ROHATYN. Senator, as I recall it, one of the conditions that the Commissioner made was that the offer would have to be on a voluntary exchange relative to the shareholders of the Hartford Insurance Co. as opposed to a merger.

Senator COOK. On the basis of the voluntary aspect that you talked about, in June of 1970, ITT acquired 99.8 percent of the stock of Hartford on an exchange basis.

Mr. ROHATYN. That is correct, Senator.

Senator COOK. And that exchange basis was through the issuance of a little over 21 million shares of cumulative preferred stock by ITT to the former stockholders of Hartford, is that correct?

Mr. ROHATYN. 22 million shares, Senator.

Senator COOK. Well, it was 21,735,702 shares.

Now, this was on the basis, as I understand it, that pending any trial, with the understanding that this had already been approved by the insurance commissioner of the State of Connecticut, and that the Federal Government—that the Justice Department, back in October, had had its preliminary injunction denied, the assets of the two companies were to continue to be separated until such time as any

final action would be taken or a settlement occur, obviously, is that correct?

Mr. ROHATYN. I believe that is correct, Senator, yes.

Senator COOK. Was this procedure followed?

Mr. ROHATYN. Yes, Senator, it was.

Senator COOK. That is all, Mr. Chairman.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Mr. Kleindienst, getting back to the Walsh letter——

Mr. KLEINDIENST. Now I don't have a copy of it, Senator Kennedy. I have it.

Senator KENNEDY. I would certainly——

The CHAIRMAN. Let's recess from now until 2 o'clock.

Senator KENNEDY. Can't we have the 10 minutes?

All right.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. Senator Kennedy, you may proceed.

Wait just a minute. I place in the record a letter from Mr. Bruce B. Wilson, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Mr. Peter M. Stockett, which lists certain documents which were delivered to the committee by the Justice Department.

(The letter referred to follows:)

DEPARTMENT OF JUSTICE,
Washington, D.C., March 7, 1972.

PETER M. STOCKETT, Esq.,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. STOCKETT: I am delivering to you herewith documents pertinent to the ITT-Canteen case consecutively numbered Department of Justice 15 through Department of Justice 566. There are also documents numbered Department of Justice 44A, 59A, 205A, 258A and 258B.

I previously delivered to you a two-page letter dated April 16, 1971, numbered DJ-1 and DJ-2, and a memorandum which accompanied that letter numbered DJ-3 through DJ-14.

We have no objections to public inspection of the aforementioned documents. I have also delivered to you previously the following documents to be available for inspection by senators only:

- (1) A memorandum to the Solicitor General dated February 24, 1971;
- (2) A memorandum to the Solicitor General from Mr. Randolph dated March 12, 1971;
- (3) A memorandum to the Solicitor General from Mr. Friedman dated March 15, 1971; and
- (4) A memorandum to the Solicitor General dated March 25, 1971, with two covering buckslips dated March 26, 1971.

No copies of these documents are to be made and they are to be returned to the Department of Justice following the conclusion of these hearings.

Sincerely,

BRUCE B. WILSON,
Acting Assistant Attorney General, Antitrust Division.

Senator KENNEDY. Are those all the documents that came this morning?

The CHAIRMAN. I understand the documents have been turned over to your staff.

Senator KENNEDY. Is Mr. Wilson here?

**TESTIMONY OF RICHARD G. KLEINDIENST, ACCOMPANIED BY
RICHARD W. McLAREN, FELIX G. ROHATYN, AND KEITH I. CLEAR-
WATERS—Resumed**

Mr. KLEINDIENST. No, he is not here, Senator.

Senator KENNEDY. Could I see the copy?

The CHAIRMAN. Give him the copy.

Senator KENNEDY. Mr. Kleindienst, just while we are reviewing the documents that have been provided to the committee as contrasted to the ones that were requested, I think this morning you told the committee you will be furnishing it with certain materials and documents, but—I believe these will paraphrase your words—“memorandums to the Attorney General and investigative materials are not being produced.”

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Have you obtained specific Presidential approval to withhold those documents from this committee?

Mr. KLEINDIENST. No. I am withholding those on the basis of Department of Justice policy, Senator, that has been in existence for a long time.

Senator KENNEDY. You are familiar with the President's memorandum of March 24, 1969, stating that executive privilege will not be used without specific Presidential approval?

Mr. KLEINDIENST. Well, I am not predicating my decision on executive privilege, Senator.

Senator KENNEDY. What is the basis for it?

Mr. KLEINDIENST. It is a policy decision of the Department of Justice with respect to any matters in our files of an investigative nature which, if made public, could cause harm to third persons or embarrass them, could reveal confidential sources of information, or could be of such an investigative nature and contain matters that were unverified—you know, factually, and then in antitrust matters, financial data or data of either a financial or economic nature which, if disclosed, could have an adverse effect or impact on business organizations.

So, I am not invoking—excuse me one minute, please.

In part, my decision is predicated upon statutes of the United States and in part just upon Department of Justice policy. But I am not invoking the executive privilege of the President of the United States. I am not saying I wouldn't, but at this point, I am not. I would have to get permission to do that, Senator Kennedy.

Senator KENNEDY. I think when Mr. Rehnquist testified here, he indicated to this committee that he thought executive privilege was the only basis for the withholding of material.

Mr. KLEINDIENST. I am not familiar with that opinion of his.

Senator KENNEDY. Don't you think the President's March 24 memorandum covered this? I would hope that the memorandum could be made a part of the record, the Presidential memorandum to govern compliance with congressional demands for information.

Mr. CHAIRMAN. That may be done.

(The memorandum referred to follows:)

THE WHITE HOUSE,
Washington, March 24, 1969.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Establishing a procedure to govern compliance with Congressional demands for information.

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.

2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.

3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.

5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

RICHARD NIXON.

Senator KENNEDY. "While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest"—which I would think would certainly dovetail with what you suggested here.

Mr. KLEINDIENST. Right.

Senator KENNEDY (continuing). "this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For these reasons Executive privilege will not be used without specific Presidential approval."

The subject of this is, "Establishing a Procedure To Govern Compliance with Congressional Demands for Information." That is the subject matter which you have addressed. It would seem that this memorandum would take into consideration the concerns that you have about withholding certain information that would be incompatible with the public interest, would it not? And if it does, why doesn't it cover the particular situation mentioned here?

Mr. KLEINDIENST. Well, I think for the reasons that I gave you, Senator Kennedy. Just like if you asked me to produce an FBI file, I wouldn't do that.

Senator KENNEDY. Are you comparing this kind of information that we request to an FBI file?

Mr. KLEINDIENST. No, sir, but in part, some of it would be of that kind or nature.

Senator KENNEDY. Well, of course, we are not talking about making it public; are we? We are talking about making it available to the committee; are we not?

Mr. KLEINDIENST. Well, I would make a distinction between the two, but at least as of right now, Senator Kennedy, as the Acting Attorney General of the Department of Justice, I am not inclined to give it to you.

Senator KENNEDY. Does it concern you that you, as the Acting Attorney General, are making these decisions which involve this case?

Mr. KLEINDIENST. Does it concern me? Well, I accept it as a very serious responsibility, but I can sleep at night.

Senator KENNEDY. Well, I mean as it involves this particular matter that you have asked this committee to look into?

Mr. KLEINDIENST. Sure, because the matters that were withheld—I made no personal decision on it. The staff in the Antitrust Division explained to me what they did not want to give to the committee and their reasons for it and I accepted that recommendation in taking the position I am today. I would like to get everything possible out that would be relevant or germane to the issues and the charges that we are at this hearing that was conducted at my request, Senator Kennedy.

Senator KENNEDY. What do you think the significance of this memorandum is for the Department of Justice, then? I mean if you are going to make decisions, independent decisions all the way through, given what you believe congressional committees are going to have or individuals are going to have, when does this President's memorandum apply to the Department of Justice?

Mr. KLEINDIENST. I think the Department of Justice is a little bit different from the other branches of the executive department, Senator Kennedy, because of the sensitive nature of the problems that we are confronted with, the confidential nature of a lot of our information in antitrust cases, the sensitive relationship that those memos would have with respect to business organizations, the stock market, materials that were given to us in confidence in order to assist us in arriving at a decision. Some of them contain possible statements with respect to possible criminal investigations, a discussion of the pros and cons of that. To make that kind of information available, unlike other departments of the Government, Senator Kennedy, it seems to me is against the public interest and interferes with the ability of the Department of Justice to enforce the law and protect the rights of individuals and private persons to the maximum extent.

Senator KENNEDY. Well, it would appear to me that, Mr. Kleindienst, that would be, under the President's memorandum, that would be a judgment for him to make, would it not, rather than the Department head? That is certainly what this—

Mr. KLEINDIENST. I haven't been in this business very long as an Acting Attorney General, Senator Kennedy. I haven't talked to anybody at the White House about it. I am making a decision that is predicated upon long-existing policy, not only in this administration but in previous Attorneys General. And I am going to continue to effectuate that policy regardless of that statement.

Senator KENNEDY. Regardless of the President's memorandum?

Mr. KLEINDIENST. Yes, sir; as of right now, unless I get some instructions to the contrary.

Senator KENNEDY. Wouldn't this appear to be contrary? He says if the head of an executive department believes that compliance with requests for information from a congressional agency addressed to his department or agency raises a substantial question as to the need for invoking executive privilege, you should consult your Attorney General through the Office of Legal Counsel of the Department.

Have you asked the Office of Legal Counsel for any kind of opinion on this?

Mr. KLEINDIENST. No; I have not.

Senator KENNEDY. Could I ask Mr. Clearwaters why Mr. Kleindienst has indicated that the Antitrust Division has reluctance in supplying this information? Could you give us any help as to why you believe it shouldn't be made available?

Mr. CLEARWATERS. I think that Mr. Kleindienst has very adequately explained the problems that are involved in a disclosure of this information, Senator Kennedy.

Senator KENNEDY. Have you consulted with the Office of Legal Counsel?

Mr. CLEARWATERS. I personally?

Senator KENNEDY. Well, your Department. You are speaking for the Department.

Mr. CLEARWATERS. I want to thank you for elevating me to that position, Senator Kennedy, but I am not here as Counsel for the Department.

Senator KENNEDY. Mr. Comegys isn't here.

Mr. KLEINDIENST. I am speaking for the Department.

Senator KENNEDY. I thought the Antitrust Division—I thought you had indicated earlier in response to a question that this was a position made by the Antitrust Division.

Mr. KLEINDIENST. It was a recommendation made to them pursuant to long policy, not only in this administration but in past administrations, and I concur in that recommendation and have made the decision on behalf of the Department of Justice.

The CHAIRMAN. Your 10 minutes are up.

The Chair would like to make this observation. I guess I have seen more FBI files than any other Member of the Congress and I certainly don't think that any file that has to do with an investigation should be given to any congressional committee. People in those files are taking a crack at another man that are wholly unjustified and if it were publicized, it would destroy the man. It is a quirk in human nature to take cracks at people and I believe that is what Mr. Kleindienst has said.

Mr. KLEINDIENST. Mr. Chairman, may I add something else, because I don't want the public record to conclude anything else. There is nothing in the material that we have withheld from you that would tend to prove or have any relevant bearing upon the charge that there was any connection whatsoever between the settlement of the *ITT* antitrust cases and any payment by the *ITT* Corp., to the city of San Diego in connection with the Republican Convention. I will make that avowal under oath before you and this committee and the public.

Senator KENNEDY. Of course, Mr. Chairman, I don't think any of us are requesting individual FBI files. We have other requests in terms

of memoranda involving these cases. And since the Acting Attorney General has supplied some of the information here, some of which is public, the rest of which, as I understand it, is for Senators only, I was just trying to find out the basis on which he will supply some documents and withhold others.

Mr. KLEINDIENST. Well, Senator, just to kind of restate this thing, these kinds of memoranda contain materials from grand jury investigations or from CID requests for materials. By statute, we cannot furnish that information. Congress has passed a law on that. We feel that those matters that we are prohibited by law to give someone that are contained in these prosecutive memoranda, that the prohibition would apply.

And I am not going to give it, Senator, unless I am compelled to do so.

Senator HART (presiding). I apologize; I was not here when Senator Kennedy began. I don't know how the time has run.

Senator KENNEDY. Mine has expired, I think.

Senator BURDICK. Mr. Chairman, can you yield time?

You can have mine.

Senator KENNEDY. It has to go over to the other side.

I think with the indulgence of the other side, I will take 30 seconds.

Could you supply to us a memorandum from the Office of Legal Counsel on the authority for withholding of this information?

Mr. KLEINDIENST. Well, I will talk to the Office of Legal Counsel about it, Senator, then as the spokesman for the Department of Justice, I will be available to respond to you again.

Senator KENNEDY. That isn't—

Mr. KLEINDIENST. I am not saying I will or I won't, Senator, but I will have the matter referred as a legal proposition to the Office of Legal Counsel, whether I give you a memorandum on it or whether I come back as the Acting Attorney General and tell you that I have changed my mind or not changed my mind. We will wait and see.

Senator KENNEDY. Will you give me assurance that you will do either one?

Mr. KLEINDIENST. I will give you my assurance that I will discuss it with the Assistant Attorney General in the Office of Legal Counsel.

As a matter of fact, I will direct that to be done right now, Senator Kennedy.

I have directed that to be done right now, Senator Kennedy.

Senator HART. The Senator from Kentucky.

Senator COOK. I have no further questions.

Senator HART. The Senator from North Dakota.

Senator BURDICK. Can I yield my time?

Senator HART. Yes, not to exceed 10 minutes.

The 10 minutes then is yielded to the Senator from California.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. McLaren, when I was questioning you earlier, we were talking about the manner in which the decision was made based upon financial information that was made available to you by Mr. Ramsden, and also by Mr. MacLaury, as well as the information that was made available by ITT and your own 25 years of experience. I was in the process of trying to discover for my own satisfaction why so much weight was placed on the Ramsden memorandum, particularly when you consider that the Department of Justice had spent several

thousand hours in preparing this case and you as a prominent trust-busting chief of the Antitrust Division were so sure earlier on that this merger should not take place, and you were explaining to me that you felt that Mr. Ramsden's qualifications were good and that Mr. Ramsden had done a very good job for you in the Ling-Temco-Vought case.

Now, can you please explain to me a little bit more clearly how you felt that Mr. Ramsden's experience made him the kind of expert that would require a reversal of a decision that you had made and that departmental attorneys had made and the attorneys had spent hours and hours preparing a case toward its divestiture?

What was it about Mr. Ramsden's qualifications that made you feel that he, in and of himself, 33 years old, 34 years old, could give you the kind of background to help you resolve this issue in your own mind?

Judge McLAREN. Well, I think, as I said before, Senator Tunney, this was just one of the factors that I considered and I felt that Mr. Ramsden's experience as an analyst was something that would give us a cross-view on our own thinking, on ITT's presentation, and on our own evaluation of our case.

Now, you say we have expended a lot of time and hours, made a big investment in the case. And that is very true. And that is always on the line, as, for example, we had a good-sized staff on *Grinnell*. We worked long and hard preparing it. We spent weeks in the trial and when we finished up, the trial judge said, nope, I don't think there is a violation of law here.

Well, now, when I send up a memorandum to the Solicitor General recommending appeal, his "no" decision is a writeoff of that entire investment. I think that your question really takes the wrong perspective on this thing.

Basically, what we were shooting at, had been shooting at from the beginning of 1969, was to stop this merger trend that was leading more and more toward economic concentration. We lost the two cases, *Grinnell* and *Canteen*, in the courts. We lost a preliminary injunction in *Hartford*. And the question we have to ask ourselves is, Are we going to do a better job toward stopping this process of concentration by big mergers through pursuing these cases, perhaps having a bad setback with *Grinnell*, because it was going to go up to the Supreme Court alone, or at least well ahead of *Hartford*, and make the value judgment, would it be better to get a good, tough consent decree here and is that going to interrupt the spiral of concentration? Is this going to be a big deterrent to others who are pursuing or helping to emulate ITT, which was really the leader in this big firm and leading firm kind of acquisition program? And weighing all of these factors, plus the fact that if we were to go ahead and win, we might do more harm to the economy than good, I made the determination to try to work out a settlement that we could live with under the antitrust laws.

I had assisting me a number of very dedicated people in the Antitrust Division who are anything but yes-men, I assure you, Senator. One of them reminded me that after we really felt all of the returns were in, sitting in my office with the fellows around in a semi-circle, I polled them one by one and asked them for their views on this thing. They thought that this was a good settlement.

And I must say, I have an extract from Business Week dated August 7, 1971, that came out right after this settlement. Business Week, in effect, said that I had accomplished what I had set out to do 3 years before, or 2½ years before. They said that the message to big business was that if you are already big, you can only keep growing by acquisition if you shed some other assets and stay at relatively your present size.

Now, I don't agree with that interpretation, but I think that this is the kind of deterrent we got out of this thing.

Fortune magazine at the same time had something similar. They said that Geneen of ITT had been the big leader of the merger movement. Now, he is going to have to grow from within.

That is their title here. I will be glad to give these to you for the record.

Senator HART. Judge and Senator Tunney, I apologize for interrupting the answer, but a vote is occurring on the floor. We will recess to resume at 3 o'clock.

(Recess.)

The CHAIRMAN (presiding). Proceed.

Senator TUNNEY. Mr. McLaren, you referred to a Business Week editorial of August 7, 1971, and the final paragraph of that editorial reads as follows:

If McLaren and his lawyers feel that the mushroom growth of the conglomerate corporations threatens the U.S. economy and infringes the antitrust laws, then it is their duty to push the point with the courts until the law is established beyond question. It is not fair either to the companies involved or to the public to keep on brandishing the antitrust gun without ever proving that it really is loaded.

Now, that is the Business Week editorial which I believe you referred to in which you said they indicated that you had a very tough decree.

Judge McLAREN. I don't find that, Senator. The one I referred to is "Special Reports." The views on bigness are contradictory. It starts on page 58 of the issue of August 7.

Senator TUNNEY. This is the same issue, but apparently, this is the editorial.

Judge McLAREN. I don't recall it at this time.

Senator TUNNEY. Well, Mr. McLaren, were you aware of the fact that Mr. Ramsden's company owned 22,000-plus shares of ITT stock before he came to work for you?

Judge McLAREN. No; I was not aware of that then, and I am not aware of it now. What I heard, Senator, was that there was a portfolio, that they had some sort of a contract thing to manage. I didn't understand that—

Senator TUNNEY. Were you aware of that fact, that they did have the management of the portfolio?

Judge McLAREN. I read it in the New York Times.

Senator TUNNEY. When did you read it for the first time in the New York Times?

Judge McLAREN. Over the weekend sometime.

Senator TUNNEY. Would Mr. Ramsden have been required to file with any Government agency any listings of stocks that would be directly affected by a study that he was doing as a constituent for your Department?

Judge McLAREN. I would think not. On that kind of thing, I think that you pick out a man that you think is ethical, you put it

up to him as to whether or not he has any conflict of interest and so on, and I think an individual in the financial community has to be his own judge of that pretty much. You have to judge the character of the individual involved. I think we did that here. I don't think I had any discussion with Ramsden on that subject, but I had confidence in him based on our prior relationship when we did check him out.

Senator TUNNEY. Did you have discussion with Mr. Ramsden on any subject at the time that he prepared that?

Judge McLAREN. No, not in connection with ITT. I simply asked through Peter Flanigan's office that he do this study for us, and it came back through Flanigan's office, as far as I can now reconstruct it.

Senator TUNNEY. Who gave the instructions to Mr. Ramsden as to what should be contained in the report that he was making?

Judge McLAREN. I am sure that Mr. Flanigan did.

Senator TUNNEY. How could Mr. Flanigan give him those instructions?

Judge McLAREN. Because it was the same kind of thing he had done before on LTV.

Senator TUNNEY. Did you discuss with Mr. Flanigan in some detail, then, what it was that you were looking for in the study that Mr. Ramsden would be doing for it?

Judge McLAREN. Not that I recall. The question that he had to research would be what would be the impact on ITT of a loss in the Hartford Fire case and an order requiring divestiture? It is just about that simple.

Senator TUNNEY. Well, in other words, then, Mr. Ramsden's sole instructions came through Mr. Flanigan at the White House?

Judge McLAREN. Correct, as far as I know.

Senator TUNNEY. Well, do you consider it to be relevant that Mr. Ramsden's firm did have a management relationship regarding a portfolio which contained approximately \$200,000 of ITT stock? Is that relevant in your mind in his ability to be objective in writing the report?

Judge McLAREN. No; if he had told me about it at the time and said that he thought he could be objective, that it wasn't a matter of significance, it wouldn't have bothered me a bit.

Senator TUNNEY. Well, let's say that Mr. Ramsden had made a recommendation to go ahead with divestiture. Would that have had an adverse impact on the value of the stock?

Judge McLAREN. You are asking me, really, what I would have done if Mr. Ramsden's recommendation had been different than everybody else's. And I don't know what I would have done, Senator Tunney.

Senator TUNNEY. What I am asking you is whether or not Mr. Ramsden could have fulfilled his——

The CHAIRMAN. John, your 10 minutes are up.

Senator Cook?

Senator Cook. Thank you, Mr. Chairman.

Mr. Rohatyn, there are a few questions I would like to ask you. In the end result of the merger between ITT and Hartford where it was necessary for ITT to buy the stock of Hartford, in essence, 1.25 shares of Hartford for every share of ITT as I understand it, was it necessary

to do this, to trade stock in, for instance, Grinnell or in Avis or in Levitt or any of the other companies that were under consideration? Canteen, for instance? Or was it a direct acquisition of stock and then a holding of stock by the parent corporation?

Mr. ROHATYN. That is right, Senator. When ITT acquired Hartford Fire, it simply offered to the stockholders of Hartford Fire approximately 2 million shares of ITT preferred stock in exchange for their shares in Hartford stock.

Senator COOK. Now, did this make it any more complicated, for instance, if one had to—if ITT was required over a 3-year period to divest itself of Canteen, for instance, you merely divest yourself of the Canteen stock, is that correct?

Mr. ROHATYN. Well, technically, Senator, we would probably create a new corporation and put Canteen into it and sell the stock of that corporation to the public; that is right.

Senator COOK. And the same thing would happen with Avis or the same thing would happen with Levitt?

Mr. ROHATYN. That is correct.

Senator COOK. In other words, what I am getting at, was there any real further serious complication by reason of the fact that it was necessary for ITT to issue some 21,700,000 shares of ITT stock in an effort to purchase and take out of existence the stock of Hartford?

Mr. ROHATYN. Are you asking me, Senator, whether that created a new kind of problem for ITT, a technical problem?

Senator COOK. Would that have created a serious problem with regard to the divestiture?

Mr. ROHATYN. Of Hartford fire? Technically, no.

Senator COOK. So there would have been no problem of divesting, of ITT having divested itself of Hartford and merely taking the stock and returning it to Treasury or returning it or actually taking it out of circulation?

Mr. ROHATYN. No, Senator, there is, to my knowledge, no greater technical problem in ITT's divesting itself of Hartford than any of the other companies. The difference was a financial one.

Senator COOK. I noticed in the report that was prepared by Mr. Ramsden, which is quite a technical report—and I might congratulate the Senator from California, because he came to the Congress when he was 30 years old and Mr. Ramsden wrote this report when he was 33. So at least the distinguished Senator from California was 3 years younger when he came to the Congress of the United States.

In that study, he also goes into the studies of the Office of Foreign Direct Investment, Department of Commerce, whereby they were very much concerned about what this would do in regard to balance of payments.

So this might indicate in the report itself why the Commerce Department was interested in the outcome of this case. Is that correct?

Mr. ROHATYN. Senator, I have never seen Mr. Ramsden's report, so I can't comment on it.

Senator COOK. All right. Then I direct this question to Judge McLaren.

Judge, under these circumstances in his report, he brings forth the fact that studies in the Office of Foreign Direct Investment of the Department of Commerce have shown that because of its extensive

foreign operations, ITT is a very large positive contributor to the U.S. balance of payments:

This balance arises from dividends, service fees, royalties, interests and obviously, exports. It is also aided to the extent that ITT and its subsidiaries are able to finance foreign operations through foreign borrowings in lieu of expatriating funds, or reducing the flow of funds from foreign subsidiaries to the United States.

Now, this could be a very good reason for both the Department of Commerce and the Department of the Treasury to be interested in what might occur as a result of the actions of the Department of Justice, is that not true?

Judge McLAREN. That is right, Senator.

As a matter of fact, at the meeting that I had—Mr. Kleindienst had with the ITT people, Mr. Raymond Saulnier, who had been head of the Council of Economic Advisors, I believe either in the Kennedy or the Johnson administration, made a very strong pitch on that score.

Senator COOK. Would there have been necessary for ITT to expatriate funds from abroad to bring back into the United States, in your opinion as a director, if this divestiture had been required?

Mr. ROHATYN. Senator, certainly our entire method of financing our foreign operations would have had to change and I think our ability to raise funds abroad to finance our foreign operations would have been impaired.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Chairman, I would like to yield my 10 minutes for two reasons. First, to permit some greater continuity in the questioning, and secondly, because I have a 3 o'clock appointment with a former colleague of ours, Senator Gore.

Senator Gore, if we could meet in the side room here.

The CHAIRMAN. Senator Kennedy, he yielded to you.

Senator KENNEDY. Mr. Kleindienst, as I understand, you had a conversation with Mr. Walsh by telephone. Can you tell us when that conversation took place?

Mr. KLEINDIENST. In connection with this matter?

Senator KENNEDY. In connection with this matter.

Mr. KLEINDIENST. As I have testified, I have had numerous conversations with Judge Walsh over the past 3 years, for the reason that I stated. He says he called me on the morning of the 16th. It could have been the 15th or the 16th, but in any event, Senator, it was contemporaneous with the transmittal and delivery by him of the April 16 letter to my office. So I don't think the time when he called me makes any difference.

Senator KENNEDY. After the 16th, when did you talk to him again, or did you talk to him?

Mr. KLEINDIENST. I called him on the evening of the 19th to tell him that the Solicitor General was going to request an extension of time. Those are the only two telephone conversations I had with Judge Walsh or anybody outside of the Department of Justice in connection with that extension of time—

Senator KENNEDY. And could you tell us—

Mr. KLEINDIENST (continuing). To my recollection.

Senator KENNEDY. Could you tell us the conversation on the 19th? What did that involve?

Mr. KLEINDIENST. Well, it took about, I would imagine it would have taken a few seconds unless I would have talked to him about some judicial candidate. Let's assume I did not talk to him about a judicial candidate. It would have just been a matter of a few seconds Senator Kennedy.

Senator KENNEDY. And this conversation with Mr. Walsh was about the—why did you feel you had to call him back?

Mr. KLEINDIENST. I think as a courtesy. I didn't have to.

Senator KENNEDY. He had telephoned you about this case and—

Mr. KLEINDIENST. Mr. Walsh and I are very close friends and have developed a very close friendship over the 3 years as a result of our work together in the judicial program. We had the conference with Mr. McLaren and the Solicitor. The Solicitor was asked to file an extension. He said that he would and I merely called him to tell him what the decision was. I guess it was a courtesy more than anything else. I didn't have to.

Senator KENNEDY. At any time did you talk to Mr. Rohatyn about this?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. You didn't mention his name during the course—

Mr. KLEINDIENST. No, sir. I hadn't met personally Mr. Rohatyn at that time. At about that time, I would have probably—at or about that time, Mr. Rohatyn would have called me to come in and see me on the 20th, the next day.

Senator KENNEDY. Could you tell us, when Mr. Walsh called, did you tell Mr. McLaren about that telephone call?

Mr. KLEINDIENST. Did I?

Senator KENNEDY. Yes, or did you—

Mr. KLEINDIENST. I don't know if I did nor not, Senator Kennedy, because the call would have indicated that he was going to deliver the letter and the memorandum of law to me by a young man in his office. The time was rather short, as I think you can tell. The 16th—the 20th was the last day. I don't know if I did or not. I know when the young man came to my office and handed me the materials, I didn't even read them. I called Mr. Comegys or I called for Mr. McLaren and he wasn't there and Mr. Comegys came up and I handed the materials to the young man in his presence.

Senator KENNEDY. When was the final time for the—

Mr. KLEINDIENST. I believe the 20th was the last day.

Senator KENNEDY. So this was on the 16th and—

Mr. KLEINDIENST. A Friday.

Senator KENNEDY. You have no recollection of talking to Mr. McLaren about either the telephone conversation or about the letter?

Mr. KLEINDIENST. No, I don't, Senator. But I could have.

Senator, I would like to say something here, if I may. These events occurred a year ago. This wasn't the only matter that I had. It didn't seem to me to be of any particular consequence.

Senator KENNEDY. Which didn't?

Mr. KLEINDIENST. Well, these; I mean that there wasn't any particular significance to these matters other than just routine

business in the Department of Justice in an item that would just be among hundreds that I would be dealing with.

Senator KENNEDY. You didn't think that the request to the Solicitor General or his appeal for a delay was—you thought that was a routine request?

Mr. KLEINDIENST. Well, it wan't routine. What I am trying to say, Senator, is that when I say to the best of my recollection, I would have done nothing about it at the time, to write a memo to myself or make a notation of it, to have it stick in my mind.

Senator KENNEDY. Well, are you familiar with the Solicitor General's memorandum that he provided for us?

Mr. KLEINDIENST. Generally speaking.

You mean the statement that he gave you?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. Just generally speaking.

Senator KENNEDY. The Solicitor General, Griswold?

Mr. KLEINDIENST. Yes, I know who you are talking about. You mean the statement that he gave to the committee?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. I just generally agree with it.

Senator KENNEDY. Well, he indicated in that, in his memorandum to the committee, talking about the extensions of at least 10 days, he said that you rarely failed to comply with the 10-day rule.

Mr. KLEINDIENST. Right.

Senator KENNEDY. Didn't he indicate to you, at least in your conversation, that this was something more than routine or——

Mr. KLEINDIENST. Oh, I agree with you on that, yes, sir.

Senator KENNEDY. Then what do you think was ordinary and what was extraordinary?

Mr. KLEINDIENST. I don't think it was ordinary from that standpoint. My comment was, Senator, to say that I don't have recollections with respect to whether I called McLaren or Mr. Walsh called me. I know I sent the material down, which would be customary for me. Mr. McLaren came back up with it to discuss it with me on Monday. We discussed it and called the Solicitor General in, and we asked him to file for an extension of time.

Senator KENNEDY. We will come back into those events. The reason I am just wondering about the Walsh phone call and whether then you talked to McLaren is because you were really quite clear in response to Senator Bayh when the question came up about Mr. Rohatyn and his telephone call with you. As a matter of fact. I read now from the transcript. He is talking about the meeting:

Well, I still find difficulty here. I remember you saying that if Mr. Rohatyn had been a lawyer, you would not have talked to him.

Mr. KLEINDIENST. I would not have; no.

Senator BAYH. You would have sent him to Judge McLaren.

Mr. KLEINDIENST. I would have; yes.

Why didn't you send this letter or turn this phone call over to Mr. McLaren? You must have known Mr. Walsh was an attorney.

Mr. KLEINDIENST. Oh, I know that very well.

Senator KENNEDY. Well, why didn't you follow that advice?

Mr. KLEINDIENST. I think Judge Walsh's letter kind of hints at it. I think I probably told Judge Walsh that if you send me something, I might turn it over to McLaren.

Senator KENNEDY. Well, did you turn that over to Mr. McLaren?

Mr. KLEINDIENST. Yes, I did; the minute that it arrived. I didn't even read it in the presence of the young man who brought it.

But I think there is a little different element here, Senator Kennedy. That is the relationship I had with Judge Walsh, the fact that he was a former Deputy Attorney General. He isn't an ordinary attorney, as far as I am concerned. If he wanted to write me a letter and I told him I was going to turn it over to Comegys, I am not going to say, now, Judge, don't you do that. I would say, OK, send it to me and I would do what I did with it.

Senator KENNEDY. Don't you remember that?

Mr. KLEINDIENST. No. I don't. I mean offhand.

Senator KENNEDY. On the one hand, you say it is rather extraordinary because you know Judge Walsh and on the other, you don't.

Mr. KLEINDIENST. Gee, Senator, I just can't recollect, other than generally speaking, what occurred at or about that time. Even then, I had to have that Walsh letter given to me yesterday in this hearing room out of the files before I recollected that.

Senator KENNEDY. As I understand, then, this was the first contact with you with regard to this case now, the ITT case?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Now, we have finally gone back through Ryan and now we have come back through Walsh.

Mr. KLEINDIENST. I know. And let me say this, Senator. This isn't a trial for which I have prepared for 2 or 3 months.

Senator KENNEDY. I know.

Mr. KLEINDIENST. If something comes up that refreshes my recollection and I was unable to testify about it today or yesterday, I will assure you that I will come in and volunteer that something has occurred that will refresh my recollection.

Senator KENNEDY. Well, is there anything else that you can remember, having thought about this case or having come up during the course of these questions that you would want to say in addition, rather than sort of having, you know, either letters come up or be introduced by the chairman or hear in the press?

Mr. KLEINDIENST. I feel like giving a long speech, Senator Kennedy, but I don't think that would be helpful to you. I have some subjective feelings about it that I am trying to suppress.

Senator KENNEDY. You have some subjective feelings about it?

Mr. KLEINDIENST. Yes. Sure, I have feelings, too, Senator Kennedy.

Senator KENNEDY. Sure.

Could we go to the letter, Mr. Walsh's letter? Would you agree with me that—do you have a copy of the letter?

Mr. KLEINDIENST. Yes, sir, I do.

Senator KENNEDY. Would you agree with me on that second paragraph, when he says:

Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department.

Doesn't that sound pretty much like they thought they were going to lose that case in the Supreme Court?

Mr. KLEINDIENST. Gee, I think you just have to draw your own conclusions, Senator.

Senator KENNEDY. What conclusions do you draw from them, just from that language?

Mr. KLEINDIENST. You mean if I accept this language for what apparently it says?

Senator KENNEDY. You were accepting language in the letter.

Mr. KLEINDIENST. I didn't read it when I got it.

Senator KENNEDY. Oh, you didn't read this letter, either?

Mr. KLEINDIENST. No, sir, when it was delivered to me, I asked Mr. Comegys to come up and I handed the letter and the memorandum of law to him and told him that this came from Judge Walsh.

Senator KENNEDY. Well, now, let me get it straight. With Mr. Griswold and your meeting with Mr. Griswold, what did you—the action that Mr. Griswold took in behalf of the Government, was that on his initiative?

Mr. KLEINDIENST. No, as I have testified, Senator Kennedy, Friday the 16th, I delivered the letter, I handed him the letter and the memorandum of law with the young man who delivered it to me in my office. It was 3 or 4 in the afternoon—I don't know. 2, 3, 4, 5.

Then on Monday afternoon, Mr. McLaren contacted me and said, I have gone over this request of Judge Walsh and I would like to talk to you about it. He came up. We discussed it.

Senator KENNEDY. You discussed the letter?

Mr. KLEINDIENST. Well, we discussed—I don't even think I read the letter there. We discussed the request contained in the letter, Senator. We didn't pick it apart like we are doing now, analyze what Judge Walsh thought or what we thought we meant. What we were dealing with was the request contained in the letter and that is to say an extension of time in the *Grinnell* case. Mr. McLaren said, I don't agree with the contention made here.

Senator KENNEDY. I am sorry, he said what?

Mr. KLEINDIENST. He said, I don't agree with the position taken in Judge Walsh's letter.

But it seems to me inasmuch as no harm can be done by giving the extension, since the case could not be heard in that term of the court, he had no objection if we requested the extension.

At that point, I called the Solicitor General and he came down to my office while Judge McLaren was there and we asked him if he would ask for the extension. And he said that he would, and he did.

Senator KENNEDY. You called him, as I understand it?

Mr. KLEINDIENST. Yes, I did. While the Judge was in my office.

Senator KENNEDY. Did you ask him for the extension, or did Mr. McLaren?

Mr. KLEINDIENST. I think it was a joint request.

Senator KENNEDY. Well, someone has to make the request.

Mr. KLEINDIENST. Well, let's say I did.

Senator KENNEDY. Well, did you? That is what I want to find out.

Mr. KLEINDIENST. Well, I don't recall, Senator. The Dean recollects that I did and it is so said in his statement. I don't think it makes any difference. The request came jointly from me and Judge McLaren—we weren't both talking at the same time—to have him do this, and he did.

Senator KENNEDY. Did Mr. McLaren mention the other parts, did he mention to you that as far as Mr. Walsh was concerned, it looked like the Justice Department was going to win or be successful?

Mr. KLEINDIENST. He didn't have to tell me that on that day. Mr. McLaren was a very strong advocate for his belief that if he got all those cases up there at the Supreme Court at the same time, he was going to win them all.

Senator KENNEDY. That is what Mr. Walsh thought, too.

Mr. KLEINDIENST. I think you can draw any conclusion out of that that you want. I think you would have to talk to him. I understand the Solicitor General did not share Mr. McLaren's enthusiasm for these cases.

Senator KENNEDY. He wasn't involved in the decision, was he, whether to go ahead or not?

Mr. KLEINDIENST. Who?

Senator KENNEDY. The Solicitor General.

Mr. KLEINDIENST. Yes, he was, oh my. In the Department of Justice, the Solicitor General makes the decision whether or not we are going to appeal a case to the Supreme Court.

Senator KENNEDY. Was he making a decision based upon his review of the merits of the Walsh letter, or at your request?

Mr. KLEINDIENST. He didn't even discuss that. He was asked to get an extension of time, Senator Kennedy. But these appeals would not have been taken to the Supreme Court—and incidentally, a short time later, this appeal was perfected without the concurrence of the Solicitor General.

Senator KENNEDY. Was the delay—his decision to move ahead on the delay, was that based upon his opinion of the merits or your request?

Mr. KLEINDIENST. No, it was our request.

Senator KENNEDY. Your request?

Mr. KLEINDIENST. Solely.

Senator KENNEDY. And certainly McLaren—

Mr. KLEINDIENST. Well, he concurred in our request to ask for the extension of time, right. But he did not initiate it.

Senator KENNEDY. Well, he, in effect, did what you told him to, didn't he?

Mr. KLEINDIENST. Well, I didn't say, now, Dean Griswold, you do this and get out of here and get your paperwork done.

Senator KENNEDY. Well, why don't you tell us what you did say?

Mr. KLEINDIENST. Well, I am sure we discussed the matter, Senator Kennedy, and the reasons for it. And the Dean concurred at that and said that he would ask for the extension of time.

The CHAIRMAN. We will recess now until the end of the rollcall.

(Recess.)

The CHAIRMAN. We will have order.

Senator COOK. Mr. Chairman, would the Senator from Massachusetts yield for just a moment?

Senator KENNEDY. Yes.

Senator COOK. Mr. Chairman, I would like to ask if the hearings could be suspended temporarily now.

Former Governor Louie Nunn is here. He flew up at the chairman's request and is here. He has to go back tonight and I am wondering whether we could, if it is the pleasure of the committee, to put him

on now? Then, when he is finished, we could resume with the present witness.

Senator HART. Mr. Chairman, whether our friends who have been on that witness stand believe it or not, we really had hoped to be able to continue and if possible conclude, or at least get as far down the road as we could, with Mr. Kleindienst and Judge McLaren, understanding that each is under obligation, one in court and the other in the office.

Mr. KLEINDIENST. I have no objection to this procedure Senator Hart.

Senator HART. Then you will be back tomorrow?

The CHAIRMAN. Yes. It shouldn't take but a few minutes.

Senator HART. Judge, we are sorry.

Judge McLAREN. It is quite all right, sir. I just hope I can get off.

The CHAIRMAN. Do you solemnly swear the testimony you are about to give is the truth, if whole truth, and nothing but the truth, so help you God?

Mr. NUNN. I do.

The CHAIRMAN. Give us your name.

TESTIMONY OF LOUIE B. NUNN, FORMER GOVERNOR OF THE COMMONWEALTH OF KENTUCKY

Mr. NUNN. Louie B. Nunn.

The CHAIRMAN. What offices have you held in the State of Kentucky?

Mr. NUNN. Judge of Barren County, Ky.; Governor of the Commonwealth of Kentucky.

The CHAIRMAN. Now, were you present, state whether or not you were present in the Governor's mansion when Mrs. Beard talked to Attorney General Mitchell?

Mr. NUNN. Yes, sir; I was there.

The CHAIRMAN. Now, tell us what happened?

Mr. NUNN. Well, to the best of my memory, Senator, the Attorney General, myself, and several others were in one of the drawing rooms there at the executive mansion. Mrs. Beard—I am not sure whether she was there when the Attorney General came down or whether she came in later. But in any event, several of us were standing around talking and the Attorney General told some story about Martha and the telephone and said something about A.T. & T. With that, Mrs. Beard responded something to the effect that that was a dirty word and why didn't he say something about what they were doing to I.T. & T.

The Attorney General said in substance that he had nothing to do with that, he had disqualified himself and she knew it.

And she said the damn rotten deal that they were getting, that he ought to look into it.

He indicated that that was not the time or the place or something for him to discuss and it became a bit embarrassing to me. I suggested that we go into a buffet supper or dinner which was being served there for people who might stop in.

As we walked out of the drawing room into it, across a hall and into another drawing room, across another hall into the dining area to serve ourselves, to go into the ballroom where we were seated, as I

recall, Mrs. Beard walked along and three or four or five other people—I don't remember particularly who was along, but as we walked along, she continued to talk, trying to get back on the subject from time to time about I.T. & T. and what was happening to them.

Sometimes I assumed the Attorney General was listening, sometimes we were talking to other people. It was not a fast walk, just a group that walked and talked about the Derby.

We served ourselves and went in and were seated. I don't remember whether Mrs. Beard sat at the table with us or at a different table. There were small tables of about six or seven people at a table.

In any event, she came back to the table or raised the issue again about I.T. & T. and the Attorney General became very disturbed about it.

He said that he was sick and tired of hearing this about what thing that she was trying to do in regard to it and he didn't want to hear any more about it.

She moved on and the next thing that I recall was that someone came to me—we were still in the dining area and about finished eating—and said that Mrs. Beard was ill, that she—that they had gotten a vehicle and taken her back to the motel where she was staying.

I later discovered that she either had a light heart attack or she was exhausted or maybe a combination of both, together with drinks, I think. They had laid her out on the floor there for a few moments and tried to revive her somewhat and then she was removed from there. And that was the extent of what occurred there at the Governor's mansion with Mrs. Beard and the Attorney General.

The CHAIRMAN. How long have you known Mrs. Beard?

Mr. NUNN. I could not tell you. Some 5, 6, or 7 years.

The CHAIRMAN. Do you know whether or not she is a heavy drinker?

Mr. NUNN. Well, I have observed her on occasions where she was drinking quite heavily; yes, sir.

The CHAIRMAN. Senator?

Senator HART. Did you ever have any conversations with her concerning the I.T. & T. cases?

Mr. NUNN. Nothing more than the next day. Mrs. Beard came back to the mansion after the Attorney General had left and she was very disturbed for fear that her conduct and her behavior there might cost her her job. She seemed very obsessed about losing her job and she realized, evidently, that she had conducted herself in a manner that she shouldn't.

Senator HART. She realized that or she told you that?

Mr. NUNN. Well, in any event, she told me that she was very concerned. I don't recall ever having any conversations with Mrs. Beard specifically about that case; no, sir. She may have mentioned it at some time. As a matter of fact, I guess she did at some of the Governor's conferences where I may have seen her. But I don't remember discussing any specific aspects of it.

Senator HART. Do you remember discussing the cases with her on occasions other than the one at the Derby and the following day?

Mr. NUNN. I did not discuss it with her at the time at the Derby, the cases. She was trying to talk about it, but there was no discussions.

Senator HART. Your testimony is that the first time you discussed I.T. & T. with her was the following day?

Mr. NUNN. No; I didn't discuss it with her then. I said she might have made some mention of it at that time about what she was wanting or what she wasn't wanting, but I don't recall the specifics of it.

Senator HART. To the best of your recollections, what did she say the next day at the mansion and what did she say, if anything, to you on other occasions about I.T. & T.?

Mr. NUNN. Well, the next day I don't remember anything specific she said other than the fact that she would not want to discuss, would not want to prejudice any cases by her conduct, or she wouldn't want to lose her job by anything she might have done there.

Now, I don't know that I ever recall any specific instances. However, there may have been times when I saw Mrs. Beard at the Governor's conferences or there may have been some occasion when I saw her in Washington when she might have mentioned the ITT occasion. But to answer you specifically as to whether she ever asked me to exert any influence or to obtain any information concerning those cases, the answer is no, I do not recall of any instances where she ever did that, sir.

Senator HART. Did she ever discuss with you or in your presence the matter of financial contributions to the Republican convention committee?

Mr. NUNN. No, sir, I never heard it mentioned at any time that I recall.

Senator HART. Have you ever had any conversations with the Attorney General on the subject of ITT?

Mr. NUNN. No, sir. I never have.

Senator HART. Have you ever had any conversations with the Attorney General, meaning Mr. Mitchell, with respect to the financing of the Republican National Convention in California?

Mr. NUNN. No, sir. As a matter of fact, I was opposed to the convention going to California. I wanted it to come to Kentucky.

Senator HART. I won't ask you how you would have financed it.

Mr. NUNN. You have been in politics as long as I have and you should be as familiar, perhaps more so, than I am with the financing of political campaigns.

Senator HART. I won't comment further on what I would think appropriate in that connection.

Mr. NUNN. I did not mean to be facetious, but I do not know the financing. As a matter of fact, we were asking hotels, motels, and anyone in Louisville, Ky., that we could find, to put up some money to help finance that one. That was our hope there.

Senator HART. Have you talked to any person in the Department of Justice with respect to the ITT cases?

Mr. NUNN. No, sir. You are talking about the settlement of it? No, sir.

Senator HART. Well, any aspect?

Mr. NUNN. No, sir, I have never discussed the ITT cases with anyone in the Justice Department.

Senator HART. Nor, I take it, with anyone in the Department have you discussed the matter of financing of the convention?

Mr. NUNN. No, sir. I don't recall ever having discussed the convention with anyone, not even when we were trying to get it in Kentucky. I also came up and made a bid with Mr. O'Brien, with the people from Kentucky, about the Democrats having their convention

there also. But with neither of them, as I recall—someone else made the presentation. Now, there may have been—I may have been present at either of those meetings when there was some discussion about our financing the conventions. But as far as any connection with ITT financing a convention at any place or any time, I have no memory of it ever having been, any expressions made in my presence.

Senator HART. What discussions, if any, have you had with anybody at ITT?

Mr. NUNN. I don't recall any discussions that I have had with anyone at ITT about the convention at all. On one occasion when I was coming to Washington at the Dulles Airport, there was someone—and I do not recall his name—that Mrs. Beard introduced me to as a representative of ITT. At that time, Mrs. Beard was again talking about being in Kentucky and did I think that—I didn't think that Mitchell was upset with ITT because of what she had done. She did bring up what had happened there in Kentucky, because obviously, she was concerned about her job throughout this whole thing.

Senator HART. I am not clear on that answer. Did you say that you told her you thought Mr. Mitchell was not upset by her discussions of ITT?

Mr. NUNN. I think that Mr. Mitchell was upset by her conduct, and the fact that she raised the issue, but I don't think that he would—I think he understood her condition and the circumstances under which it arose.

Senator HART. Well, in your conversation with her at Dulles, what exactly did you tell her on this particular point?

Mr. NUNN. Well, I don't remember the exact words, but she introduced me to this man, said he was a representative or associated with ITT, and did I think that Mitchell was upset or that he would be prejudiced in any way or would take any action against ITT or her because of her behavior there on that night.

Senator HART. Did you express that as your opinion?

Mr. NUNN. My opinion that he would not, because I think that he—

Senator HART. Based on what?

The Chairman. Let him answer.

Mr. NUNN. Based on the fact that he would understand her condition at the time she was saying what she was saying and what she was doing in Kentucky on that given night.

Now, I never—Mr. Mitchell didn't tell me that he was upset or was not upset. Mine was purely from observation, which was quite obvious.

Senator HART. Who was the individual with ITT that you met at Dulles?

Mr. NUNN. I don't remember the man's name, or if I had ever met him before, if I have ever met him since. I don't know. Because I don't—I didn't remember the name.

Senator HART. Well, you say that she was concerned about her job?

Mr. NUNN. Yes, sir. She had, on numerous occasions, said there were some people who were trying to get her job and that they were going to get her job and, in my opinion, she was trying—and that they wouldn't let her get through to see the people, and particularly

when she was drinking she would go into this thing about what they were trying to do to her. Now, I don't know who they were or what.

Senator HART. You have given me two occasions when I understand you had conversations with her bearing on ITT—well, no, you say that you did not have conversations with her, even at the Derby. The only other time, then, would be at Dulles?

When were these other times when you say she was talking this way?

Mr. NUNN. I think I told you that I had known Mrs. Beard, or at least told Senator Eastland that I had known Mrs. Beard, for some 5 or 6 or 7 years. Mrs. Beard usually was present at the Republican Governors' Conferences. I saw her when I would come to Washington on occasions to transact business here. And it was not unusual to hear her make expressions. I saw her in Sun Valley, Idaho. I saw her in Indiana at the Governors' Conference. She was at the Republican Governors' Conference in Kentucky. She was at every Derby while I was Governor. So it was not unusual to see Mrs. Beard at some of these places.

Senator HART. But my curiosity is not with respect to how often you saw her but how many times she talked to you about the ITT matter, her conversations?

Mr. NUNN. I don't recall her ever talking to me specifically about the ITT in a manner where she asked me to get information or to furnish any information or to exert any influence in any manner. But when she was drinking, when she was around a group, it was not unusual for her to go into something about the people that she worked for and who was trying to do what to her.

Senator HART. What did she say in those sessions?

Mr. NUNN. Well, she would say that certain people, or they, or some of them in Washington, were trying to get her job. She seemed to be obsessed about it. And I don't know why or what.

Senator HART. I believe my time is exhausted.

Mr. NUNN. Sir?

Senator HART. My 10 minutes are up.

Senator Hruska?

Senator HRUSKA. I have no questions. I will yield my time to my colleague from Massachusetts.

Senator KENNEDY. Are we yielding? Can we get that rule straight?

Senator MATHIAS. Go ahead, Senator.

Senator COOK. I have only one question, Governor.

On the occasion that she met you at Dulles and had someone with her from ITT, and you indicated at that time that there was no, you thought there were no hard feelings on the part of the Attorney General, was this in the nature of polite conversation because she had somebody with ITT with her that she introduced you to? Had you ever met this individual before?

Mr. NUNN. I don't know, Senator, whether I had ever met before or not. I just don't recall who it was because it was of no significance to me.

Senator COOK. And as far as you are concerned, this occasion was no more than polite conversation with someone who got off an airplane; namely, you, and——

Mr. NUNN. Well, I got off the airplane——

Senator COOK. And she walked up to you and said, Governor, how are you, I want you to meet somebody?

Mr. NUNN. She was there on the occasion and you are apt to see Mrs. Beard most any place.

Senator COOK. Governor, at any time, did Mrs. Beard ever mention that the name Richard Kleindienst to you in relation to ITT, or any discussions that she had, either about her job or whether she had acted improperly, or whatever the occasion may be, that she would ever connect ITT and Richard Kleindienst in the same conversation?

Mr. NUNN. I have no memory of her ever mentioning Kleindienst's name in any discussion at all.

Senator COOK. Thank you, Mr. Chairman.

Senator KENNEDY. Governor, you have mentioned the times that you talked with Mrs. Beard as the day after the incident at the Kentucky Derby about ITT, and also sometime at Dulles; is that correct?

Mr. NUNN. Senator, I didn't talk to her about ITT——

Senator KENNEDY. That she mentioned it to you?

Mr. NUNN. At the Derby, except as I recall, she said she so hoped it would not prejudice her case or anything because of her conduct there or cause her to lose her job. I don't consider that discussion as such. And certainly, she was upset and I was not going to upset her more by saying I thought it would or it wouldn't.

I just said that I think he would understand the circumstances and conditions.

Senator KENNEDY. Did you ever transmit that concern to Attorney General Mitchell?

Mr. NUNN. No, sir; I was embarrassed about it and I never raised, never mentioned the question to the Attorney General again and hoped he forgot it.

Senator KENNEDY. And you saw her, at least she mentioned this incident to you out at Dulles; is that right?

Mr. NUNN. Yes, sir.

Senator KENNEDY. Now, how many times, say, in the last few years have you been in the presence of Mrs. Beard?

Mr. NUNN. Senator, I would have no idea. I was chairman——

Senator KENNEDY. Well, approximately.

Mr. NUNN. I was chairman of the Republican Governors' Association. Our office was near a place over there where they ate lunch. I don't even remember the name of the place. I would be there, I would sometimes go over there for lunch, Mrs. Beard would be there. I have had lunch there with her and other people who would be there.

Senator KENNEDY. Was she drinking on those occasions?

Mr. NUNN. As a usual thing, yes; not as excessively as I had seen her on other occasions, but——

Senator KENNEDY. What about out at Sun Valley at the Governors' conference? You mentioned that you saw her out there, too?

Mr. NUNN. Yes, sir.

Senator KENNEDY. Was she drinking out there, too?

Mr. NUNN. Yes, sir.

Senator KENNEDY. Then what are some of the other times you saw her? What are the other times you met Mrs. Beard?

Mr. NUNN. Well, I saw her, as I said, in Kentucky at the Derby. I saw her when I was here in Louisville. I saw her at——

Senator KENNEDY. Were those instances when she was drinking?

Mr. NUNN. Sometimes she was drinking more than she was others, sometimes she was drinking less. I didn't count the number of alcoholic drinks. I don't know how much she was drinking.

Senator KENNEDY. Nonetheless, she was invited to the Governor's mansion for the party after the Derby?

Mr. NUNN. I would assume that she was. She was there, and I don't think she came uninvited. She was invited to the Derby breakfast.

As a usual thing, at the Derby, you have the colonels' dinner, which is on Friday night; you have a breakfast for about 750 people on Saturday morning; and you go to the Derby and then there is usually a buffet after for people who come back. Some do and some don't.

Senator KENNEDY. Who makes up the list for the Governor's reception?

Mr. NUNN. I assume that when the first list was made for the first Derby, perhaps Mrs. Nunn, or her secretary. I probably gave some names to it.

Senator KENNEDY. Do you think you gave Mrs. Beard's name?

Mr. NUNN. Well, I don't recall whether I did or not. That was 5 years ago.

Senator KENNEDY. How else would she have gotten on the list?

Mr. NUNN. Mrs. Nunn might have put her name on. Mrs. Nunn knew Mrs. Beard also.

Senator KENNEDY. Nevertheless, you or Mrs. Nunn invited Mrs. Beard?

Mr. NUNN. I would say so, yes.

Senator KENNEDY. You wanted her to come to that party?

Mr. NUNN. To which party?

Senator KENNEDY. To the party after the derby?

Mr. NUNN. She had been invited to all of them we had ever had for four Derbys. So there was nothing special about this one, if that is what you are inquiring about.

Senator KENNEDY. But you have given a number of incidents when you have met her and known her and described her condition quite clearly, it wasn't sufficiently objectionable that you wouldn't include her in your own party after the derby?

Mr. NUNN. Certainly not. She was not objectionable at all.

Senator KENNEDY. Pardon?

Mr. NUNN. She was not objectionable or she would not have been invited.

Senator KENNEDY. Then how would you describe your relationship with her? Did you consider her a friend?

Mr. NUNN. Yes, she said that I was her friend and I am also pleased when people call me a friend.

Senator KENNEDY. And you consider her to be your friend?

Mr. NUNN. Yes, I consider her to be my friend.

Senator KENNEDY. Did you ever talk to the Attorney—

Mr. NUNN. I invited a lot of people there. I had Congressmen, Senators, and some people I knew quite well, some I didn't know so well. I had industrialists there. Many people express a desire to be there and sometimes, they are invited and sometimes they aren't.

Senator KENNEDY. Did you ever talk to the Attorney General Mitchell about the incident?

Mr. NUNN. No; there was no reason to ever mention it to him, because as I said, it was embarrassing to me and I hoped he would forget it.

Senator KENNEDY. Now, do you remember the people who were present during the conversation when Mrs. Beard presented her views?

Mr. NUNN. No, I don't remember specifically who was there at a given time. I know there were people there who came by who Mrs. Nunn had met in Utah at the Governor's conference—Mrs. Morrison. I didn't know them when they came in. Mrs. Nunn had asked them to stop by, it was someone she had seen at the derby. Mr. Berenson was there, there was Mr. Emmerton and Mr. Host—some people from Illinois. I don't remember specifically who all the people were.

As a usual thing, and some would come and go, there were roughly 30 or 40 or 50 people there at all times.

Senator KENNEDY. At the reception?

Mr. NUNN. Yes, I assume you would call it a reception. It was a buffet where people came. They were invited.

Senator KENNEDY. But you cannot remember the people you were in direct conversation with at the time that Mrs. Beard came up and started speaking about the ITT case?

Mr. NUNN. No, I do not, Senator, because I had had 750 people for breakfast that morning and had been with 1,500 the night before and several the night after that, and Derby time gets to be quite a busy time in Kentucky. You just see hands and faces and so on.

Senator KENNEDY. Would you be willing to give us the guest list just for that reception?

Mr. NUNN. If it is available, I will; certainly. I don't know where it is, because when my term ended as Governor, I didn't have any need for it. I thought if I ever need it again, I will make up a new list.

Senator KENNEDY. Now, at the time, as I understand from what you have commented on here, you were having a conversation—

Mr. NUNN. Now, wait just a minute. Let me correct this. I don't imagine there is a Derby list or a special reception list for that particular instance, Senator, that Saturday afternoon after the Derby. There would be an invitation list for the Derby breakfast, but for that afternoon, that was an occasion where you might see someone at the Derby where you would say, would you like to stop by the mansion? But there was no formal written invitation that went out.

Senator KENNEDY. Would you not have known them pretty well if you invited them back after the Derby?

Mr. NUNN. Well, yes; I certainly would. Now, some of them Mrs. Nunn knew. For instance, the lady from Utah, and she brought with her some four, five, or six people that I had never met before and Mrs. Nunn had never met before, because sometimes they get to having a good time at the derby and say, come over here or there and think it would be all right to come along. They get to the door and want to come in, and you are not going to turn them away because they have one or two extra with them.

Senator KENNEDY. At the time when Mrs. Beard approached the group that was talking—I think you indicated Mrs. Mitchell was talking—did Mr. Mitchell seem to know Mrs. Beard at that time?

Mr. NUNN. I don't know that he did. I assume that I had introduced them when they came in. Certainly he knew, obviously knew who she was.

Senator KENNEDY. But there was no familiarity with Mrs. Beard—there was no way of you knowing whether he knew her or did not know her?

Mr. NUNN. No, I just assumed he did, because you say, this is Mr. so-and-so, and have you met so-and-so, and I assume he did, say it is nice to meet you. I don't know that I was the one who was present. Mrs. Nunn might have been there and there might have been some other when they first came in. But as far as I know, I was there and I assume that I made the introductions or the presentations or introduced them or whatever you want to say about it.

Senator KENNEDY. Well, did the Attorney General seem to know what Mrs. Beard was talking about when she started in?

Mr. NUNN. Well, yes. He said—Senator, I have already been through substantially what was said there and what occurred.

Senator KENNEDY. Well, that is what we are all trying to sort of get, trying to figure out.

The CHAIRMAN. I am going to have to blow the whistle on it. Your 10 minutes are up.

Senator MATHIAS. Mr. Chairman, I have just one question.

Governor, have you at any time had any conversation with Mr. Kleindienst with respect to either ITT or Mrs. Beard?

Mr. NUNN. No, sir; I have not.

Senator MATHIAS. Thank you.

Senator TUNNEY. Governor, in the meeting that Mrs. Beard had with the Attorney General in your mansion—

The CHAIRMAN. Speak a little louder.

Senator TUNNEY. In the meeting that took place in your mansion between Mrs. Beard and Attorney General Mitchell, were you present at all times when Mrs. Beard was talking to the Attorney General?

Mr. NUNN. There was not a meeting as such. There was a gathering of people and as far as I know I was present at all times.

Now, it is quite possible that when they were standing around talking, I might have walked into another room with someone else momentarily. But there at the mansion—it was built in 1914—there are side archways and wide halls and you could walk out into a hall without really being in or out of the room. I do not remember, Senator, specifically staying there all the time, but as far as I know, I was there about all the time.

Senator TUNNEY. Would it be possible for Mrs. Beard and the Attorney General to have had a conversation which you did not hear?

Mr. NUNN. Well, I assume that it was possible, but I am under—I am quite certain that it did not occur because it would have been next to impossible. Certainly the first time that it appeared the issue was raised was when she responded like she did after he told this story. And, of course, the situation being a little bit precarious there, the way that she said it and his response, I certainly didn't move away there and she was gone after it was first mentioned in my presence the first time.

Senator TUNNEY. So after the thing was mentioned for the first time, you were with either Mrs. Beard or the Attorney General for the rest of the evening?

Mr. NUNN. I was with the Attorney General; that I know.

Sentor TUNNEY. At all times?

Mr. NUNN. Yes.

Senator TUNNEY. And it would not have been possible for Mrs. Beard to have had any conversations with the Attorney General which you did not hear?

Mr. NUNN. Well, as I said, as we walked down to go into dinner, now, she might have said something to him that I did not hear, but I don't think so. Because he was talking to other people. He seemed to be trying to direct his attention away from her and she seemed to be walking along talking. As I have said, some of the things I think she was saying to me, or saying it so he could hear it. It was an embarrassing situation, one that you would, you know, like to avoid between guests.

Senator TUNNEY. Could you perhaps give us a little bit better the flavor of the conversation that took place between Mrs. Beard and the Attorney General? You have been most polite in relating the conversations. On the other hand, in that Mrs. Beard apparently had a slight heart attack after the series of conversations, there must have been quite a good deal of color attached to the conversation.

Mr. NUNN. Well, I don't know what you would call color. Some have one idea of color and some another. The best that I could do is just describe what happened.

As I recall, the chairs in that room were green. [Laughter.]

I don't see that it would add a great deal to this.

Senator TUNNEY. I was speaking of the color of the conversation between Mrs. Beard and the Attorney General, not the color of the upholstery. I would say the Attorney General was probably a bit red because he seemed to be upset about the situation.

And Mrs. Beard, did she really lay into him on the ITT?

Mr. NUNN. Did she——

Senator TUNNEY. Yes, into the Attorney General?

Mr. NUNN. Well, I again don't know what you would call laying into him.

Senator TUNNEY. I want to know why she had a heart attack.

Mr. NUNN. Some people lay in one way and some people lay in another.

The CHAIRMAN. Let's have order.

Mr. NUNN. She said she didn't know why in the hell they didn't do something about what they were doing to ITT, if that is what you mean, or words to that effect. I don't remember the exact words. I am not going to try to quote them. I remember generally what the contents of it was, but I can't remember specifically. That has been some time ago and as I have said, I wanted to forget it because it was an embarrassing occasion.

Senator TUNNEY. But from what I can understand of your testimony, she made it very clear to the Attorney General that she wanted him to take action on the ITT merger settlement?

Mr. NUNN. She made it very clear that she wanted to talk to him about it and he made it very clear to her that he didn't want to talk about it.

Senator TUNNEY. And she brought this up on how many separate occasions, as you were talking and walking in?

Mr. NUNN. Well, she kept it pretty much going as we walked in. I mean she didn't let up very much; that was the reason that I said, "Let's go eat." She kept trying to talk. Now, some of it was mixed

up and garbled a little bit and he might get off on some other subject and she would come back to it. But I don't remember specifically every step of the way.

Senator TUNNEY. She never talked to you about the ITT merger case before, ever before, at any time prior to that situation?

Mr. NUNN. Not that I recall. Certainly, I did not know anything about it. She didn't talk—well, she might have talked to me about it, because maybe I was listening, as we walked through, to some of it. But I didn't know—I guess that I knew, and again I don't relate it to anything, I guess that I knew about the ITT case. But as to what was in it, what companies or what they, what the results sought were or anything, I knew nothing of the particulars. Now, to say that I didn't read anything up, I don't know anything about it.

Senator TUNNEY. Did you have any doubt, after listening to this running commentary of Mrs. Beard as you walked in to dinner, what was that she was trying to talk to the Attorney General about?

Mr. NUNN. No, I think I knew what she was trying to talk about, that she felt that ITT wasn't getting what was coming to them and he ought to do something about it.

Senator TUNNEY. And he indicated that he did not want to talk to her about it?

Mr. NUNN. Yes, sir, Senator, that is right.

Senator TUNNEY. And the next day, when she came in to visit with you, were you by yourselves at the time when she talked to you about her chagrin?

Mr. NUNN. I don't recall the particulars of that incident. I just remember that she stopped back by to more or less apologize and to express a concern about her conduct and what she had said and obviously what she was trying to do there and to more or less apologize and get an expression from me as to whether or not this would in any way affect her job or anything of that nature.

Senator TUNNEY. She mentioned whether or not it would affect the ITT case with the Justice Department?

Mr. NUNN. I don't know. I don't know that she said that. She indicated that she hoped Mitchell wouldn't take it out on her or somebody else.

Senator TUNNEY. And that it would not affect the ITT merger?

Mr. NUNN. This was the substance. In substance, no, she didn't mention merger specifically. I don't recall her mentioning the word, "merger".

Senator TUNNEY. But she seemed very concerned about her job? This was the thing for the last few months that Mrs. Beard had been very disturbed about, apparently, her job, because she seemed to be obsessed that somebody was trying to get her job and she didn't intend for them to foul her up?

Mr. NUNN. Obviously, she was trying to score a point somewhere.

Senator TUNNEY. She seemed concerned about the negotiations that ITT had with the Justice Department on the antitrust suit?

Mr. NUNN. I didn't hear her express any specific concern other than what I told you earlier, that she tried to relate or was endeavoring to relate to the Attorney General over his opposition. That is the only thing that I know about it. I have told you all that I recall about it.

I don't care how you turn it, I can't bring it out any other way for you.

Senator TUNNEY. I am not trying to turn it any other way, Governor. Please don't think that I am trying to turn anything on you.

I do happen to have in front of me a memorandum which Mrs. Beard wrote, and I quote from the June 25 memorandum. She says:

I am convinced, because of several conversations with Louie re Mitchell, that our noble commitment has gone a long way toward our negotiations on the merger eventually coming out as Hal wants them.

Mr. NUNN. I have no control over what Mrs. Beard wrote any more than I had any control over what Mrs. Beard said that night.

I certainly did not——

Senator TUNNEY. And you did not have several conversations with——

Mr. NUNN. No, sir; I did not have several conversations with Mrs. Beard and I had absolutely none whatever with Mr. Mitchell.

The CHAIRMAN. Your time is up.

Senator GURNEY. I think it is my time, Senator.

Senator HRUSKA. Certainly, excuse me.

Senator GURNEY. Governor, in this wild exchange between Mrs. Beard and the Attorney General, did she mention anything about any noble commitment or any words to that affect?

Mr. NUNN. No, sir; I never heard anything about noble commitment or any words to that affect.

Senator GURNEY. Or about any other commitment, noble or otherwise?

Mr. NUNN. No, sir; I did not.

Senator GURNEY. Nothing was mentioned about any money which ITT might be putting up and might be willing to put up for the Republican convention in San Diego?

Mr. NUNN. No, sir; I have no recollection of any money being mentioned, any San Diego, or any convention, or anything of that nature.

Senator GURNEY. Incidentally, I participated in one of those fund raising things that conventions do down in Florida. I know how hard it is to raise money. During your efforts to come up with money for a convention in Kentucky, did ITT make any offers or overtures to you?

Mr. NUNN. No, sir; they did not. I was not—all I did was come to Washington and appear before the Democratic National Committee. I don't think I was privileged to come when they appeared before the Republicans, but I did meet them when they came to Kentucky and I tried to convince them that Kentucky would be much better than Florida.

Senator GURNEY. That is all.

The CHAIRMAN. Senator Hart.

Senator HART. I think I have no questions, Governor, unless in the course of your testimony your recollection is further refreshed as to what actually was said. You have characterized—have given your impressions of—conversations between others and I am not critical of that——

Mr. NUNN. Yes.

Senator HART. But I am suggesting that we perhaps would be in a better position to judge what characterization we should put on it if we could know in greater detail what was said.

Mr. NUNN. Well, let me say this, sir, that I have no memory of any words being uttered by Mrs. Beard—by the Attorney General other than that he did not in substance, did not want to talk about it.

First he said he removed himself from it.

The second thing he said was that it was not a time or place to talk about things like that or to talk about this or anything else.

The third thing that I recall him saying was that he didn't want to hear any more about it, he didn't like the approach that she was making or the pressures that had been brought, or something of this nature. And he was right vehement in his last expressions.

It has to be generalities, because I can't remember that long and the number of conversations that day. As I said, it was an embarrassing situation. So I heard no offers and no wrong doing there on that occasion.

Senator HART. Did he say anything with respect to what kind of pressures had been brought?

Mr. NUNN. No, sir.

Senator HART. Just that pressures had been brought?

Mr. NUNN. That is all that he—he said something about the pressures being brought. Again, we were in a room, there was organ music there and—I didn't know that I was in a position to quote him verbatim. But it didn't go on for a prolonged period of time at the table, I can tell you that.

Senator HART. And this was in the mansion?

Mr. NUNN. Yes.

Senator HART. A house that has many rooms?

Mr. NUNN. A home that has many rooms, Senator. [Laughter.]

Senator HART. We don't have the association in Michigan with the word "house" that would make the use of the word questionable.

In any event, it was the home of the Governor of Kentucky?

Mr. NUNN. Yes, sir.

Senator HART. I have never been there, but I assume it is not a small building?

Mr. NUNN. No; it is reasonably large.

Senator HART. Appropriate for a Governor of a great State?

Mr. NUNN. Well, it depends on who is serving at the time. [Laughter.]

Senator HART. You never felt demeaned by having to live in it, did you?

It was appropriate, in your judgment, for the office you held?

Mr. NUNN. Oh, yes, yes.

Senator HART. There was a period of several hours during which a reception was going on, is that right?

Two hours, 1 hour, 3 hours?

Mr. NUNN. Well, I would say that we probably arrived back from the Derby at 6 or 6:30. I can't tell you exactly. And the Derby is run at 5 something. There was another reception for the Derby winner there at the track which the Governor attends. Then after that, we drive back to Frankfort and I would assume that it was 6:30 or a quarter to 7 when we got back there.

I can't tell you. I don't want to try to fix the time because I have no idea, give or take an hour.

Senator HART. Well, you got there at 6:30 roughly and how long was the party?

Mr. NUNN. No, sir, I didn't say. I said 6:30 or 7 give or take an hour and I can't be specific because I just can't remember. I don't know how long I stayed at the party at Churchill Downs. I don't know whether this was the one I enjoyed a lot or it was the one the year before.

Senator HART. This was not the one where Dancer's Image won and was disqualified? It wasn't that one?

Mr. NUNN. No; that wasn't the one.

Senator HART. All I am trying to find out, so that all of us can make a judgment, is how long you were there, how many people, generally the size of the room. I will get to the point. Can you say that Mrs. Beard and Mr. Mitchell did not have a conversation out of your hearing?

Mr. NUNN. To the best of my knowledge, they did not.

Senator HART. Can you say that they did not was my question.

Mr. NUNN. I can say that they did not go out of the room and if they had a conversation it certainly would have had to have been momentarily, a momentary thing where they would, say, pass a casual word without me being able to hear. I was in the presence of the Attorney General, as far as I know, all the time. Now, Mrs. Beard, I am not quite sure. She may have wandered away and come back. I think she did.

Senator HART. Throughout the entire reception, were you in the presence of Mr. Mitchell?

Mr. NUNN. As far as I recall, I was. I might have walked out in another room. I may have gone to the bathroom. I don't remember that too clearly.

Senator HART. Then it wasn't unfair of me to ask the question; you are not in a position to say that they did not have a conversation out of your hearing?

Mr. NUNN. As far as I know, they did not.

Senator HART. Thank you, Mr. Chairman.

The CHAIRMAN. All right, Senator.

Senator HRUSKA. Governor, how did you send out invitations for this reception? Was it by mail?

Mr. NUNN. Senator, there were not any invitations for this specific reception. I said this was the sort of thing where some of your close friends and acquaintances may drop by. You may ask someone to come back. But the procedure was that we made up an invitation list for the Derby breakfast. This is conducted by—

Senator HRUSKA. I am talking about the reception now.

Mr. NUNN. Well, there is no list for the reception.

Senator HRUSKA. You invited Dita Beard for that personally?

Mr. NUNN. As far as I know, either Mrs. Nunn or myself probably said come by, or else we might have said come by to the people she was with. I don't recall the specific occasion of her being invited to come back.

The CHAIRMAN. There is a rollcall vote.

Senator HRUSKA. Governor, I read now from an article in the Washington Post, February 28, byline Jack Anderson. I am quoting: "At the Governor's reception, she said," referring to Mrs. Beard, "Mitchell took her and Nunn aside and to her astonishment and shock launched into an hour long diatribe against her." Is that right?

Mr. NUNN. That is absolutely untrue.

Senator HRUSKA. Was it for an hour that she and you and Mr. Mitchell had that talk that you described?

Mr. NUNN. No, sir; it was just a matter of minutes.

The CHAIRMAN. When Senator Hruska gets through, we are going to recess until 10:30 tomorrow morning.

Well, go ahead if you can finish.

Senator HRUSKA. This article goes on to say in consecutive order, "he criticized her for putting pressure through Congress on the Justice Department and the White House on the antitrust cases." Is that true?

Mr. NUNN. I do not recall any specific criticism.

I may have heard the words he didn't appreciate the pressure or he didn't appreciate what she was doing, but it wasn't an hour long and he just didn't appreciate the approach.

Senator HRUSKA. Now, it goes on to say that "after his harangue, Mrs. Beard said Mitchell agreed to discuss the antitrust matters, and asked bluntly, what do you want, meaning what companies did ITT most want to keep if the antitrust cases were settled."

Is that true?

Mr. NUNN. No.

Senator HRUSKA. It goes on to say, "We have to have Hartford Fire because of the economy," Mrs. Beard recalls saying. She also told Mitchell ITT wanted to keep part of the Grinnell Corp. a managing concern.

"She said Mr. Mitchell at first replied, You can't have part of Grinnell, but he subsequently relented."

Is that true?

Mr. NUNN. No, sir it is not true.

Senator HRUSKA. And then, of course, there was the further paragraph referred to by Senator Tunney. Quoting her, "I am convinced because of several conversations with Louie (Governor Nunn) re Mitchell that our noble commitment has gone along way toward our negotiations on the merger coming out as Hal (ITT President Harold Geneen) wants them."

Is it true that she had several talks with you on this subject?

Mr. NUNN. No, sir, and I never had any conversations with the Attorney General.

Senator HRUSKA. That is all the questions I have.

Mr. NUNN. Thank you.

Senator KENNEDY. Governor, we are going to recess for just a few minutes. I think we have some additional questions here. So we will recess and be back in just a few minutes.

(Committee recess.)

Senator HART (presiding). The committee will be in order.

Senator, had you finished?

Senator HRUSKA. I had just finished.

Senator HART. The Senator from Massachusetts.

Senator KENNEDY. Governor, are you familiar with a newsman called Ward Sinclair?

Mr. NUNN. Yes, sir.

Senator KENNEDY. Well, he has just confirmed with my staff a news story which appeared in the Louisville Times of February 29 in which he confirmed statements made by you to him on the phone that day.

Do you remember talking to him after the Anderson column broke?

Mr. NUNN. I remember him calling me.

Senator KENNEDY. Do you remember having a conversation with him?

Mr. NUNN. I am sure I had some conversation with him.

Specifically what are you referring to, sir?

Senator KENNEDY. I am just trying to find out whether you remember talking to him after the Anderson column broke. Do you remember talking to him?

Mr. NUNN. Yes, sir; I remember him calling.

Senator KENNEDY. And didn't you return his call?

Mr. NUNN. Yes, sir; I believe that is right.

Senator KENNEDY. So you did talk to him, then?

Mr. NUNN. Yes, sir.

Senator KENNEDY. All right.

Can you tell us, to the best of your ability, what that conversation was? You seem to remember pretty clearly the basis of the conversation after the Derby. Can you remember this conversation that you had with Ward Sinclair?

Mr. NUNN. Nothing more than he called and said that I had been implicated in a story here and it is a rather serious implication, did I have any comment? Or I believe that was the second part of it. What did I have to say about this story?

I turned behind my desk, and picked up what I had said to other reporters so that there would be no question, that the statement attributed to Mr. Mitchell by the Associated Press seemed to be a sufficient explanation and I had nothing to add. As I recall, he said these were rather serious implications involving me and I told him that there was no truth in it, or words to this effect, and I didn't care to comment on it. Generally, that is the best I remember. Now, whether there was something else said, I don't recall.

Senator KENNEDY. He wrote in the Louisville Times on February 29, and this is a quote from the story:

Nunn acknowledged that Mitchell and Mrs. Beard had talked in Frankfort but said he was unaware of the topic of discussion. The former Governor also said, "Sure, I know Mrs. Beard. She's been to every Derby since I was Governor."

Mr. NUNN. Yes, sir.

Senator KENNEDY. Well, can you remember saying that to Mr. Sinclair?

Mr. NUNN. I remember telling him Mrs. Beard had been to every Derby since I had been the Governor.

Senator KENNEDY. Do you remember saying that you were unaware of the topic of discussion as reported in Mr. Sinclair's column?

Mr. NUNN. Not in Mr. Sinclair's column, but in Mr. Anderson's column.

Senator KENNEDY. Well, didn't you tell Mr. Sinclair that you were unaware of the topic of discussion?

Mr. NUNN. Not that I remember the call. If I left him under that impression, it was that I was not aware of the things that were alleged in the column.

Senator KENNEDY. That isn't—according to Mr. Sinclair, it says, "but said he was unaware of the topic of discussion." Quite clearly that is——

Mr. NUNN. Well, I am sorry. Mr. Sinclair——

Senator KENNEDY. That was referring to the conversation between Mitchell and Mrs. Beard. I am just wondering if that were so, what brought about your memory for us here this afternoon?

Mr. NUNN. Senator, I have told you here today to the best of my memory what occurred and I cannot be responsible for what Mr. Sinclair writes, whether he misunderstood or whether he took me out of context. But what I have told you here today is the best of my memory.

Senator KENNEDY. In Mr. Anderson's column, he said:

She said she met with Mitchell at the Governor's mansion in Kentucky during a dinner reception given by Republican Gov. Louie Nunn last May after the Kentucky Derby.

That is accurate, is it not?

Mr. NUNN. She was there and Mitchell was there. But I have no knowledge of them meeting.

Senator KENNEDY. This is Mr. Anderson's column's suggestion.

At the Governor's reception, she said, Mitchell took her and Nunn aside and to her astonishment and shock, launched into an hour-long diatribe against her.

That seems to substantiate what you said here earlier today, does it not?

Mr. NUNN. No, sir.

Senator KENNEDY. Well, then, how would you distinguish between what he said and what you said here, diatribe against her? Was it shorter than an hour or longer than an hour? Was it a diatribe or not a diatribe?

Mr. NUNN. I have told you substantially what occurred and it is not as reported there.

Senator KENNEDY. Well, is there a difference between a dressing-down and a diatribe? Are we just fooling with words? What part of that would you disagree with? "At the Governors' reception, she said, Mitchell took her and Nunn aside * * *."

Mr. NUNN. Well, I would disagree with that.

Senator KENNEDY. "* * * and to her astonishment and shock, launched into an hour-long diatribe against her."

Mr. NUNN. I don't know about her surprise and shock. I know that there was no hour-long discussion. So I disagree with that.

Senator KENNEDY. Well, you know about her shock afterward?

Mr. NUNN. Well, I know what was reported to me.

Senator KENNEDY. Didn't you see her when she was on the floor?

Mr. NUNN. No, sir; I did not.

Senator KENNEDY. So you were not with her then?

Mr. NUNN. No, sir; I was with the Attorney General.

Senator KENNEDY. How long before she went on the floor were you not with her?

Mr. NUNN. I don't know how long she was in there. I wasn't keeping time. I didn't know she was going——

Senator KENNEDY. Then you weren't with her all the time?

Mr. NUNN. No, sir, I wasn't with her all the time. I was with the Attorney General.

Senator KENNEDY. Further, Mr. Anderson reported he criticized her for putting pressure on the Justice Department and on the White House in the antitrust cases. As I remember, you mentioned earlier,

you said that the Attorney General objected to pressure that had been brought.

Doesn't that seem to be accurate as well, in Mr. Anderson's column?

Mr. NUNN. As I reflect upon it, he didn't appreciate the pressure that she was trying to bring there at a social event, her pressure, her pressing on, after he had told her twice that he just wasn't interested.

Senator KENNEDY. I think in response to an earlier question by Mr. Hart—I wrote it down here—you said he objected to pressure that had been brought, not that she was bringing.

Mr. NUNN. She had brought that earlier on two different occasions in the drawing room.

Senator KENNEDY. On two different occasions?

Mr. NUNN. In the drawing room, she tried to bring the subject up. He said he didn't want to talk about it, that he had disqualified himself. So she persisted.

Senator KENNEDY. So that was the pressure that the Attorney General was objecting to, the two different incidents that you have mentioned here?

Mr. NUNN. As far as I have been able to determine; yes.

Senator KENNEDY. Then the Attorney General didn't indicate that he objected to the pressure until the third time she said it?

Mr. NUNN. Well, by his conduct, he obviously had, Senator, because he had tried to dismiss the subject and he didn't start yelling, I object, I object. But by his conduct, I could tell that he obviously objected.

Senator KENNEDY. Had the Attorney General been at other parties at the Governor's mansion?

Mr. NUNN. No; not that I recall, if he had been to other parties at the Governor's mansion.

Senator KENNEDY. Or receptions or whatever?

Mr. NUNN. No; he had been at the breakfast earlier that morning.

Senator KENNEDY. So all of this took place at the buffet after the derby; is that right?

Mr. NUNN. Yes; all of the conversations I have related. Not what is there.

Senator KENNEDY. He was at the breakfast in the morning; was he?

Mr. NUNN. Yes, sir; he was.

Senator KENNEDY. Was Mrs. Beard at the breakfast?

Mr. NUNN. I would assume she was. She was invited. There were some 750 people and I can't say specifically that I saw her there.

Senator KENNEDY. Could she have talked to him at that breakfast?

Mr. NUNN. I assume that she could have.

Senator KENNEDY. You don't know that she didn't?

Mr. NUNN. There were any number of people that did.

Well, as I recall, Mrs. Nunn and I went to Spindletop Hall where the breakfast was being conducted. When we got there, there were several people. The Attorney General and Mrs. Mitchell were driven there later and Mrs. Nunn and I greeted them in this front hall. There were some 700-plus people moving around through the area and they were late. I know they were late arriving there and some of the people were leaving, they had waited in the hope of seeing him and Mrs. Mitchell. He was being greeted, people were gathering around him and pictures were being made. It wasn't a place conducive to conversation other than to greet people.

Senator HART. Your 10 minutes have expired.

The Senator from Kentucky.

Senator Cook. Governor, let me ask you, Attorney General and Mrs. Mitchell were your guests at the derby; is that right?

Mr. NUNN. Yes; that is right.

Senator Cook. How many receptions had you gone to on Friday evening?

Mr. NUNN. I had gone to only one on Friday afternoon. I had been to one on Thursday night, I had been to one on Friday afternoon and Friday night and Saturday morning and Saturday after the derby and then back there at the mansion.

Senator Cook. Governor, is it not uncommon—it is unfortunate that all my fellow members of the committee have not had occasion to go to the derby—but it is not uncommon when you have guests to the derby and you are invited to the party that whoever invites you says, just bring your guests?

Mr. NUNN. It is a very hospitable time and that is usually the situation.

Senator Cook. This is what occurred on Saturday evening, is it not? When you run into people at the track and you say, "Come by the mansion," and somebody says, "Well, I have some guests," you say, "Just bring them along."

Mr. NUNN. It happens. It was not a thing where you would send out invitations.

Senator Cook. So, conceivably, there would be a number of people there whom you did not know but who had friends that you did know whom you invited?

Mr. NUNN. I remember the specific instance of the lady from Utah who came with more than we had really expected.

Senator Cook. You did invite some 700 or 750 guests for breakfast on Saturday morning, did you not?

Mr. NUNN. Yes, sir.

Senator Cook. It is your responsibility at the Derby, is it not, to be the head of the festivities shortly after the Derby is over?

Mr. NUNN. Yes, sir.

Senator Cook. And during the course of the Derby day, how many people would you think would either shake hands with you or that you would walk up to and shake hands with?

Mr. NUNN. Well, I don't know whether it lists in the hundreds or thousands, but as a usual thing, you don't see any—the Governor doesn't have an opportunity to see the race himself, the Derby, because he is usually getting people or signing autographs or something of that nature and at Derby time, you go over to the center of the track and wait there for the running of the race. That is the only race which you usually can see.

Senator Cook. And as I remember very vividly, the Attorney General and Mrs. Mitchell were your guests in the Governor's box, is that not correct?

Mr. NUNN. They were.

Senator Cook. And right after the races, you went to what is commonly referred to as the winner's party?

Mr. NUNN. Yes, sir.

Senator Cook. Which is a reception of some 300 or 400 people?

Mr. NUNN. Yes, sir.

Senator Cook. And you then left the races and drove to Frankfort, is that correct?

Mr. NUNN. Yes, sir.

Senator Cook. That drive is approximately 50 miles from the track?

Mr. NUNN. Yes, sir; and very crowded along the way.

Senator Cook. And then you proceeded to have a buffet dinner that evening for how many people; would you estimate?

Mr. NUNN. Oh, again, Senator, I don't know—30 or 40 people. Some come for a while, some go, others may stop by. It is a very informal situation.

Senator Cook. Then on Sunday afternoon is the Kentucky colonels barbeque also?

Mr. NUNN. Right.

Senator Cook. Which is a festivity of approximately what, 3,000, 4,000 people?

Mr. NUNN. Three, four, five thousand people. I recall Senator Humphrey was at that occasion and some others—I remember Senator Humphrey and I don't remember the others.

Senator Cook. So it is a trying weekend, isn't it, Governor?

Mr. NUNN. Yes, sir. [Laughter.]

Senator Cook. So I just think we should put it in perspective that it is rather difficult to remember every word and every sentence that is supposed to have gone on between your guests and someone who may have walked up to him, who either knew him or didn't know him, and entered into a conversation with him. Is that not correct?

Mr. NUNN. Yes, I would say that that is correct.

Senator Cook. I am quite sure the Attorney General and Mrs. Mitchell rode back with you in your car from the Derby to the mansion?

Mr. NUNN. Yes; that is right.

Senator HART. We are going to get down to the name of the bartender.

The Senator from California.

Senator TUNNEY. Governor, as I understand your testimony, you seemed to feel that the Attorney General and Mrs. Beard knew each other prior to the time that they met at your mansion?

Mr. NUNN. Well, I presumed that she knew who he was and I don't know whether he knew her or not. I assumed that he possibly did. I don't know.

Senator TUNNEY. How often do you see Mr. Mitchell? How often had you seen him prior to this time? Do you know him well?

Mr. NUNN. Well, I knew him reasonably well. I knew him well enough to ask him to be my guest and he accepted.

Senator TUNNEY. Have you ever talked to Mr. Mitchell about Mrs. Beard at any time? Did you ever express any embarrassment to him about what happened?

Mr. NUNN. Not that I recall, because he didn't mention the subject and I didn't either. Obviously he must have known that I was embarrassed, too. He didn't mention it and neither did I.

Senator TUNNEY. As I understand your testimony, you never had any contact with any member of the ITT besides Mrs. Beard, who is their lobbyist in Washington, and at the meeting in Dulles?

Mr. NUNN. Not about the convention or anything of that nature. I remember—I think it was right after I was Governor—being in New York at one time on an industrial tour calling on people and that I met some of the ITT people there. But for that matter, I don't

remember what their names were. I went to many offices with enough routines telling them how great it was in Kentucky and why they should come there and build their plants and so on.

Senator TUNNEY. Did you have an opportunity to discuss with Mrs. Beard the memorandum that she wrote on June 25?

Mr. NUNN. No. Mrs. Beard called me and said that Anderson had written a story in which my name was involved and she was sorry if it brought any embarrassment.

And I said in substance, well, how did my name get involved, what have you said?

She said, you will know when you read the column.

I said, well, what does it say?

She said, well, it attributes conversations to you.

I said, well, it sounds like you are doing a bit of name dropping.

She said, you can say anything about me that you want to, and hung up.

So that was——

Senator TUNNEY. Do you recall when she called you?

Mr. NUNN. No, I do not. It has been within the past few weeks.

Senator TUNNEY. The column is dated Tuesday, February 29, in which your name comes up. Would it have been on Tuesday, do you think?

Mr. NUNN. I don't have any idea, Senator, because as I said, this was the first time that I heard or knew or anything of that nature.

Senator TUNNEY. What did you do after you got that telephone conversation?

Mr. NUNN. There wasn't anything to do but wait to read the column.

Senator TUNNEY. How long did it take for the column to come out?

Mr. NUNN. Well, I asked one of the boys in the office to see if he could find a newspaper that carried Anderson's column. He checked the Lexington papers and I don't know, one of the other papers. In the meantime, they checked with the—I didn't get the column. I didn't read the column for some time. But they got a news release on it and I got the substance of it.

Senator TUNNEY. Was that the same day, the same day that Mrs. Beard called you?

Mr. NUNN. No; a day or two after that was the first news report that I saw of it.

Senator TUNNEY. And did you, either after Mrs. Beard talked to you or after you read the column, did you call the Attorney General, Mr. Mitchell?

Mr. NUNN. No, sir; I have not talked to the Attorney General.

Senator TUNNEY. Did you speak to anybody in the Justice Department?

Mr. NUNN. I thought after all this hurrah started, I gave thought of calling the Attorney General and telling him that I would be available to testify. But then I thought that there would be those that in the event that I called him, would accuse us of trying to build the story and I thought better of that. So I did not call him and have not talked with him.

Senator TUNNEY. Did you speak to anybody in the Justice Department?

Mr. NUNN. Not to my knowledge. The first call that I had from anybody was yesterday, asking me if I would come here today and testify and that is from someone who represented himself to be associated with this hearing.

Senator TUNNEY. With the committee?

Mr. NUNN. Yes, sir.

Senator TUNNEY. Do you recall who that was exactly?

Mr. NUNN. No, sir; I don't recall that. I said I would be glad to.

Senator TUNNEY. So you have never discussed your testimony today or anything about the Anderson column with any members of Justice Department since the column was either published or since the time that you read it?

Mr. NUNN. I don't know whether it was Justice Department or who they were. I haven't discussed it except to say that I would come here and testify today.

Senator TUNNEY. Do you recall whether the person who called you worked for the Justice Department or worked for the committee?

Mr. NUNN. I don't know who they worked for. I returned the call back to Senator Eastland's office.

Senator TUNNEY. I see. And you spoke to somebody in Senator Eastland's office about testifying.

Have you spoken to anybody else regarding the Anderson column and the Beard statements?

Mr. NUNN. Sure, there are a lot of people down in my State who saw my name associated with it who would like to talk about it. You know how these things are.

Senator TUNNEY. And did you speak to anybody in Washington about this, anybody here in Washington connected with the White House or —

Mr. NUNN. No, sir. Well, as far as I know.

Senator TUNNEY. Any press people in Washington? Did you discuss this with any?

Mr. NUNN. Oh, they have been calling, some of them call all day. The representatives of the northern Kentucky paper called and Sinclair called and there were three or four or five of them. I had the same answer that had already been printed, so I quit returning the calls.

Senator TUNNEY. Did you ever see Mr. Sinclair's column before Senator Kennedy read it to you? Did you ever hear of it?

Mr. NUNN. No; I don't recall seeing it.

Senator TUNNEY. Have you been in touch with, made any attempt to be in touch with Mrs. Beard since your telephone conversation with her?

Mr. NUNN. No, sir; I have not.

Senator TUNNEY. Has she made any attempt to call you?

Mr. NUNN. Well, now, you will have to ask her that. I don't know what she has attempted to do. She hasn't contacted me.

Senator TUNNEY. She has made no attempt to contact you?

Mr. NUNN. I have no fear that she has made an attempt, because I haven't seen her.

Senator TUNNEY. Do you have any knowledge that such a memorandum was being written?

Mr. NUNN. Certainly not.

Senator TUNNEY. And when she talked to you she apologized for getting you in the Anderson column?

Mr. NUNN. This was the subject. That is what I took it to be.

Senator TUNNEY. Did she say whether her references to you were, in her mind, false?

Mr. NUNN. I had told you substantially the way I remember it and there was no further conversation.

Senator TUNNEY. Well, no, I understand that you told me as best you can remember. What I am trying to find out is whether or not she indicated to you in her telephone conversation with you whether or not she felt there was anything in the Anderson column that was false.

Mr. NUNN. What I told you she said is what she said.

Senator TUNNEY. So the answer to my question is no.

Mr. NUNN. Then you would have to read into it any implications that you want to. All I know is what she said and I took it as an apologetic sort of thing.

Senator TUNNEY. But with no indication that she felt that——

Mr. NUNN. I got no indication of anything other than what I told you. The indication was that she was apologizing for what she had done.

Senator TUNNEY. She was apologizing for what she had done. It is not a very difficult question. It can be answered yes or no: Did you have any impression that she was saying that there was anything in the Anderson column that she felt was false?

Mr. NUNN. I didn't get any impression about what her impressions were.

Senator TUNNEY. I perhaps do not recall in the detail that I should exactly what Mrs. Beard said to you in that telephone conversation. Would you just repeat it once more for me?

Mr. NUNN. Senator, as I recall, Mrs. Beard called me in my office and said that she had used my name in a column, or my name was being used in a column by Jack Anderson about a memorandum and that she was sorry she had embarrassed me or she hoped it wouldn't embarrass me.

And I said, how did you use it?

And she said, You will see it, you will find out when you read the column.

I recall saying it sounds like you are name dropping, and she said you can call me anything you want to and hung up.

This in substance was it.

I can't give you word for word, period and comma.

I got the impression that she was calling to apologize for something she had done and this was in substance it.

Senator TUNNEY. You didn't question her——

Mr. NUNN. Let me put it this way. I knew of no reason to attach any significance to it as far as any wrongdoing was concerned. So, therefore, I was not as concerned about it as you obviously are. I just didn't attach that much concern to it.

Senator TUNNEY. Having read the column, aren't you concerned about it if you didn't know what the truth was?

Mr. NUNN. Well, I know what the truth is, so I am not concerned. Or at least, I know about what I know.

Senator HART. Your time has concluded.

The Senator from Maryland?

Senator MATHIAS. No questions.

Senator HART. I would yield my time to the Senator from Massachusetts.

Senator KENNEDY. In that conversation, she didn't say that she didn't write the memorandum, though, did she, Governor?

Mr. NUNN. No.

Senator KENNEDY. And she didn't say what she was writing was inaccurate?

Mr. NUNN. Senator, I have told you the sum and substance and the beginning and end of it. That is all the conversation that I recall. If I recalled any more, I would be glad to tell you, Senator.

Senator KENNEDY. Over the period, we have been able to trigger——

Mr. NUNN. You all tax my memory and I just get through saying it and 2 or 3 minutes later, the Senator over here says he doesn't remember it. So this gets to be ridiculous.

Senator TUNNEY. All I was trying to get was a yes, or no?

Senator HART. The Senator from Massachusetts is simply trying to find out whether she said to you that it was false. Yes or no.

Mr. NUNN. Yes, I know what you are trying to find out and I have told you all I know and I can't tell you anything else, sir.

Senator KENNEDY. But you would have remembered if she had told you that the references to you were inaccurate. You would have remembered that, would you not, Governor?

Mr. NUNN. If she had told me any more than I have told you, I think that I would remember it and I would have repeated it to you, sir.

You know, in times of crisis, people don't always remember.

Senator KENNEDY. Did you tell Mrs. Beard in advance of the party that the Attorney General would be there?

Mr. NUNN. That is the most absurd thing. It was in every newspaper all over the country. Why would I tell her or anybody else he would be there?

Senator KENNEDY. I am asking you.

Mr. NUNN. I did not tell her in advance that the Attorney General would be there as far as I remember. There may have been some occasion when I said, it is always a source of interest to people in Kentucky, and as far as I know all over the country, about who is going to be at the Derby. I had at one Derby the Senate majority leader and the Senate minority leader and the President of the United States at my box. I don't know what was said between those people there on that occasion. There are many people. We have been honored by many distinguished people there and I hope all of you will come there next year. I would like to extend an invitation.

But I can't, you know——

Senator KENNEDY. Do I gather your answer is that you don't remember having a conversation with Mrs. Beard any time prior to the Derby——

Mr. NUNN. No, sir.

Senator KENNEDY. In which you had indicated that the Attorney General would be there?

Mr. NUNN. No, sir.

Senator KENNEDY. And did you have occasion to speak to Mrs. Beard prior to the time that she spoke to the Attorney General during either the morning or that evening?

Mr. NUNN. I don't recall that I do. I just can't think of any time because, as I recall, the Attorney General was speaking in Texas and did not come back until Friday night and Mrs. Mitchell, Mrs. Nunn and I traveled to Louisville together and he joined us there. I can't think of any occasion when Mrs. Beard would have been—we had been to a luncheon that day and I can't think of any occasion.

Senator KENNEDY. So, you don't remember, or she would never mention to you in a conversation with you that she wanted to see the Attorney General?

Mr. NUNN. No, sir.

Senator KENNEDY. Still, you gathered that the ITT matter was very much on her mind; wasn't it?

Mr. NUNN. Yes, sir; it was obvious.

Senator KENNEDY. Did she tell you that she had been working on getting the convention for San Diego in 1972?

Mr. NUNN. No, sir.

Senator KENNEDY. Did you know that she was?

Mr. NUNN. No, sir.

Senator KENNEDY. Well, at some time you knew that she was?

Mr. NUNN. No, sir.

Senator KENNEDY. You have read recently—you have never heard that she—

Mr. NUNN. Well, at some time.

Senator KENNEDY. When did you first become aware that she had been working?

Mr. NUNN. I still don't know that she is working on it.

Senator KENNEDY. You still don't?

Mr. NUNN. All I know is what I read in the newspapers.

Senator KENNEDY. And that she is what, that she is getting—

Mr. NUNN. I can't even recall what I read in the newspaper. I have no recollection of any comment she ever made about it.

Senator KENNEDY. I suppose at some time you found out that the Republican convention was going to California?

Mr. NUNN. When I read it in the paper.

Senator KENNEDY. And you didn't have any idea during this time that Mrs. Beard was working on trying to get the convention to San Diego?

Mr. NUNN. I don't know whether she was or was not. I was working for Kentucky. If she was, we were working at opposite ends.

Senator KENNEDY. When did you first become aware of the ITT offer for the contribution to the San Diego convention?

Mr. NUNN. I guess when I read it in the newspaper.

Senator KENNEDY. When was that, do you remember?

Mr. NUNN. I don't have any idea.

Senator KENNEDY. Do you have a brother who works in the Republican Party?

Mr. NUNN. As far as I know, he does.

Senator KENNEDY. What is his position?

Mr. NUNN. I do not know.

Senator KENNEDY. You don't know what position your brother holds?

Mr. NUNN. No, sir; I do not.

Senator KENNEDY. Do you know whether he works for the Republican campaign committee?

Mr. NUNN. He was working for the senatorial campaign committee and I don't know what he has done since then.

Senator KENNEDY. Isn't he director of the campaign committee? And a former administrative assistant to Mr. Morton?

Mr. NUNN. Former administrative assistant to Mr. Morton, that I know. And he had some type of senatorial campaign committee and I would assume he was executive director.

Senator KENNEDY. Did he hold a position in the national Republican organization?

Mr. NUNN. Not to my knowledge; no, sir.

Senator KENNEDY. In the finance committee of the national Republican organization?

Mr. NUNN. He may have. I know that he used to work on——

Senator KENNEDY. You didn't talk with him about any of these matters?

Mr. NUNN. No, sir. He and I have not communicated for some time, Senator.

Senator KENNEDY. It says in the National Journal that your brother—well, just finally, Governor, when was the last time you spoke to Mrs. Beard?

Mr. NUNN. When she called me on the telephone.

Senator KENNEDY. That was the last time?

Mr. NUNN. Yes, sir.

Senator KENNEDY. And the last time you spoke with Mr. Mitchell?

Mr. NUNN. I don't know how long it has been since I talked to Mr. Mitchell. I can't give you a specific time. I would say it has been 3, 4 months, something of that nature.

Senator KENNEDY. You don't remember what the occasion was?

Mr. NUNN. No, sir; I don't remember the occasion at all. But I can tell you this, that it had nothing to do with the subject matter here. I have never discussed that with him, that I do remember.

Senator KENNEDY. And with the exception of today, the last time you spoke with Mr. Kleindienst?

Mr. NUNN. Sir?

Senator KENNEDY. With the exception of today, the last time you spoke with Mr. Kleindienst?

Mr. NUNN. Oh, I would say that that was—let me see—possibly a year ago.

Senator KENNEDY. Do you remember that occasion?

Mr. NUNN. Yes, sir; I do. I had expressed some interest or hope of consideration for a Federal judge and I had asked that they have an investigation made as to my reputation and character to see whether the American Bar Association would approve it. As far as I know, that is the only time I had spoken to Mr. Kleindienst except—well, as far as I know, it was on that occasion, that given day. I think I saw him twice on that day. But that was the only occasion that I recall speaking to him in 3 or 4 years.

Senator KENNEDY. And to anyone from the White House, the last time you spoke to anyone from the White House?

Mr. NUNN. Well, I don't know. There are so many people over there—Rusty Winchester from Lexington, Ky. There are so many

people over there, I don't know. The last recollection I have was being there on the occasion or talking to anyone from there about anything specific was when Mr. Shehan was sworn in on the Board of Governors of the Federal Reserve Board. I was there on that occasion.

But to be specific, I have never spoken to anyone in the White House or anyone associated with anybody in the White House about the subject matter you are discussing here today, either ITT merger or antitrust or a contribution.

Senator KENNEDY. Do you remember the last time you spoke to Mr. Flanigan?

Mr. NUNN. As far as I know, the last time I spoke to Mr. Flanigan was when he appeared at a Governors' Conference in Indiana. I may have—no, I believe I did see him in the hallway the day that Mr. Shehan was sworn in. I would not be positive, but I believe that Mr. Flanigan was there.

Senator KENNEDY. At the Governors' Conference, was Mrs. Beard there?

Mr. NUNN. Yes, sir; I believe she was.

Senator KENNEDY. Mr. Flanigan was there?

Mr. NUNN. Yes, sir; Mr. Flanigan was there.

Senator KENNEDY. When was that?

Mr. NUNN. It was in November.

Senator KENNEDY. Of which year?

Mr. NUNN. Last, year, the last November.

Senator KENNEDY. And I gather from other questions—when was the last time you spoke to anyone from ITT?

Mr. NUNN. I don't know—

Senator KENNEDY. The incident that you mentioned at the airport? Is that the last?

Mr. NUNN. I would say so far as I know. I could have spoken to some of them here today, because I don't know, Senator. This has to be my best memory. There have been numerous people who have spoken to me today who have called me by name. I may know their faces, but I do not know their title.

Senator KENNEDY. I want to thank you very much for coming, Governor.

You have come up here and we appreciate that very much.

It is not up to me to let you go, but I thank you very much.

Senator HART. Senator Cook?

Senator Cook. I have just one question.

The Senator from Massachusetts asked you when Mrs. Beard called you on the occasion that she said your name was in the Jack Anderson column. He asked you if at that time she had indicated to you that she had not written a memorandum. But she did not tell you she had written one, did she?

Mr. NUNN. She said my name appeared in a memorandum, or words to this effect, and that Jack Anderson had a memorandum in which my name had appeared.

Senator Cook. So you had no knowledge at that time whether she had written a memorandum or had not written one?

Mr. NUNN. No, I did not know she had written one, still do not know whether she had written one. All I know is what I heard on the phone and that is the sum and substance of it and it will have to stand on its own.

Senator COOK. Thank you.

Senator HART. The gentleman from California.

Senator TUNNEY. I want to thank the Governor very much for coming. I appreciate your statements.

Mr. NUNN. Thank you very much, Senator.

Senator TUNNEY. I know how difficult it must be to be called on short notice to testify. I want to thank you for appearing here.

Senator HART. The Senator from Maryland.

Senator MATHIAS. I will just join in the general feeling of the committee that we are very grateful to you, Governor.

Mr. NUNN. Thank you.

I would like to return to my home now.

Thank you very much, gentlemen.

Senator HART. We will recess now until 10:30 tomorrow morning when we will resume with Mr. Kleindienst and Judge McLaren.

(Whereupon, at 6:30 p.m., the committee recessed to reconvene at 10:30 a.m., on Wednesday, March 8, 1972.)

RICHARD G. KLEINDIENST

WEDNESDAY, MARCH 8, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:40 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Hart, Kennedy, Tunney, Hruska, Scott, Cook, Mathias and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. Let us have order.

Senator Kennedy.

Senator KENNEDY. Mr. Chairman, good morning.

TESTIMONY OF RICHARD G. KLEINDIENST, ACCOMPANIED BY RICHARD W. McLAREN, FELIX G. ROHATYN, AND KEITH I. CLEARWATERS—Resumed

Mr. KLEINDIENST. Good morning, Senator Kennedy. Judge, Mr. Rohatyn.

Senator KENNEDY. Mr. Kleindienst, could you tell us on what day you first became aware of Dr. Liszka's problems with the Department of Justice?

Mr. KLEINDIENST. It was—what's today? Today is Wednesday. It was Monday.

Senator KENNEDY. Do you—when, on Monday?

Mr. KLEINDIENST. It was sometime Monday afternoon.

Senator KENNEDY. Was that before or after Dr. Liszka finished his testimony before the committee?

Mr. KLEINDIENST. It was after he testified, Senator Kennedy.

Senator KENNEDY. And can you tell us how you heard about that?

Mr. KLEINDIENST. Well, I heard about it in my office after—when I was down there in the afternoon, and I don't know who told me, Senator Kennedy. There were a lot of people around, and the subject matter was furnished that he was involved, or had been involved in an investigation, and that his wife was, and I don't know.

Senator KENNEDY. Now, there was a report in the press that you had heard on Monday morning, but this, as I understood your testimony, is sometime after Doctor—

Mr. KLEINDIENST. It was Monday afternoon.

Senator KENNEDY. And did you feel there was an obligation by the Department to inform the committee that a witness with whom——

Mr. KLEINDIENST. Yes, I did.

Senator KENNEDY (continuing). Who had been——

Mr. KLEINDIENST. I called Henry Petersen on the telephone. Mr. Petersen is the Assistant Attorney General in charge of the Criminal Division, and asked him what he knew about it. And he said that he knew very little, but that it was, those matters were handled by the U.S. Attorney, Brian Gettings, and I instructed Mr. Petersen to inform himself of all the facts available to the Department of Justice, and then to prepare a communication to the Judiciary Committee, and make any such facts that we could, you know, available to the committee.

Senator KENNEDY. And that took up to about midnight on Monday, did it?

Mr. KLEINDIENST. I do not know how long it took him, Senator Kennedy. I went home about 7 o'clock Monday night, and I do not know when he finished the letter to the chairman.

Senator KENNEDY. I think it was on the——

The CHAIRMAN. The record ought to show now that the letter was delivered to Mr. Holloman at——where is Mr. Holloman? I believe it was shortly before 10 o'clock.

Mr. KLEINDIENST. On Tuesday morning?

The CHAIRMAN. No. It was at 10 o'clock at night. I do not remember the day.

Senator KENNEDY. Fine.

The CHAIRMAN. It must have been Monday night.

Mr. KLEINDIENST. I do not know when Mr. Peterson caused the letter to be delivered, sir.

The CHAIRMAN. Well, I knew about the letter. The letter was coming around 6, and I went to, I went to a party and left Mr. Holloman to receive it. He called me and read me the letter, and I told him to deliver it, to release it.

Senator KENNEDY. I would like to, if I could, ask a few more questions about the Solicitor General's statements, Mr. Kleindienst.

First of all, Mr. Kleindienst——

Mr. KLEINDIENST. Senator Kennedy, I do not have a copy of that statement here in front of me. I wonder if you have a copy of that? I would like to have it before me.

Senator KENNEDY. Yes.

Mr. KLEINDIENST. Go ahead, Senator, until I find a copy.

Senator KENNEDY. OK. Do we have any? Do you have a copy of this statement to make available?

Could you tell us why—you had an opportunity to talk with Mr. Griswold about the preparation of the statement?

Mr. KLEINDIENST. Yes, I did. He told me he had been requested to make a statement, and he said that he was going to prepare the statement and bring it down and show it to me before he delivered it to the Senate Judiciary Committee, which he did. I read it very hurriedly, and I do not know if I said "OK" or not. I do not think that was the purpose of it. I think he did that as a matter of courtesy, and I understand that he delivered it.

Senator KENNEDY. Well, in your reading of it, did you see any parts of it that you would not have agreed with, or that you took issue with?

Mr. KLEINDIENST. Well, I was not going to dispute it, the Solicitor General's recollection with respect to what had occurred. That was his recollection, and I was not going to argue with him about it.

Senator KENNEDY. I mean, is there anything in your recollection that differed from the Solicitor General's recollection of the facts?

Mr. KLEINDIENST. I have the statement before me. I know that generally—I know that at the time he showed me I had no comment to make about it.

Senator KENNEDY. You did not feel that there was any part of it that was different from your own understanding of the fact situation which you would have taken issue with?

Mr. KLEINDIENST. No; I do not. At that time—and I am looking at it right now, Senator Kennedy.

Senator KENNEDY. Would you like to look at it?

Mr. KLEINDIENST. May I, Senator Kennedy?

Senator KENNEDY. Sure.

[Short pause.]

Mr. KLEINDIENST. I think that I felt then, and do now, that it fairly stated the situation, keeping in mind that with respect to an event a year before, people can recall things slightly differently in substance. I believe this is what I said occurred, and believe that the statement in substance was what did occur.

Senator KENNEDY. Is this the first occasion that you have had to refresh your recollection in reference to the whole Walsh letter and the——

Mr. KLEINDIENST. No, sir. As I indicated in my testimony yesterday, in a preliminary statement that I made—and I do not know if you were here at the time I did that, Senator Kennedy——

Senator KENNEDY. I was; yes.

Mr. KLEINDIENST. That just before the noon recess on Friday when Mr. McLaren and I were both testifying about that, Mr. Comegys had been going through the *Grinnell* file, and had produced for our sight the Walsh letter, and that memorandum of law, and I think almost simultaneously, too, Mr. McLaren and I, Judge McLaren and I, refreshed our recollection.

And as I indicated, we were going to bring it forth in our testimony Friday afternoon, so that that was the first occasion that I had to refresh my recollection in any way with respect to that aspect of the matter.

Senator KENNEDY. Well, now, first of all, on the day that you and McLaren met the Solicitor General, I believe that was the 18th or the 19th.

Mr. KLEINDIENST. I am positive it was the 19th because that is a Monday, and Sunday was the 18th.

Senator KENNEDY. And did you have—as I understand from what you remarked yesterday, you and Mr. McLaren were in the office prior to the time that the Solicitor General arrived?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Do you remember any conversation that you had with Mr. McLaren?

Mr. KLEINDIENST. Yes; just a conversation, the substance about which I testified yesterday, and that is that Mr. McLaren brought the letter and the memorandum up, and talked to me about it, and I believe I indicated that Judge McLaren said that he did not agree

with the conclusions or statements made by Judge Walsh in that letter, or the memorandum of law, but that it did raise a new aspect of the matter, that inasmuch as the matter could not be heard in that term of the Supreme Court, he saw that no harm would come about as a result of granting the extension of time.

I shared that attitude, called the Solicitor, and he came down. We then discussed it, and asked him to ask for the extension of time, and the meeting with the Solicitor would have been a very short meeting.

Senator KENNEDY. But, do I understand that Judge McLaren was sympathetic—did he ask for the extension of time? Did he urge you or—

Mr. KLEINDIENST. Well, he did not oppose the extension of time because it could not have affected the case one way or another. He was specific in his attitude that he did not share the general conclusions or the position stated by Judge Walsh in that letter.

Senator KENNEDY. Did he feel, did he relate to you that he thought there were new aspects of the case that were raised by the letter that either he had not considered or given full deliberation to?

Mr. KLEINDIENST. Well, gee, Senator Kennedy, that was a year ago.

Senator KENNEDY. Well, you see—

Mr. KLEINDIENST. My recollection is pretty much what I have stated it to be.

Senator KENNEDY. It seems to me that he has been on record both disagreeing with it, you know, the facts as well as the conclusion of the letter, and I was just wondering what representations he made to you that persuaded you—

Mr. KLEINDIENST. Well, generally speaking, Senator Kennedy, I think it is rather evident from Judge McLaren's testimony here, unlike his predecessors, Mr. Turner and Mr. Zimmerman in the proceeding administrations, the judge felt that the law as it stood then gave him the weapons necessary to attack conglomerate acquisitions, you know, without legislation. That was the—that was the whole basis of his policy in these very difficult areas, and they were real matters of dispute, so that when Judge Walsh wrote a letter—and incidentally, as I indicated, I did not read the letter when it was handed to me. That was delivered immediately to Mr. Comegys.

Senator KENNEDY. Then it was, pardon? It was handed to Mr. Comegys?

Mr. KLEINDIENST. Yes. The young man from Judge Walsh's firm came to my office, handed me the packet, I opened it up. It was a letter and a memorandum of law, and while we were—while I waited in my office, I put a call in to Mr. McLaren. He was not there, and Comegys was there. Comegys came in and I handed it to him, and I said, this is a matter that has been delivered to me in connection with the *Grinnell* case.

So, when I met with Judge McLaren, without having a specific recollection of what was actually said, Senator Kennedy, Judge McLaren feels now, I believe, as these hearings have indicated, and did throughout the whole time he was in the Department of Justice, that legislation was not needed to give the Department of Justice the means by which it could attack conglomerate acquisitions that would have a substantial effect on competition in the American economy.

And he did not retreat from that position on that day. The *Grinnell* case had been lost. I think there has been some testimony here that the

Solicitor General and his staff had some reluctance about the appeal, anyway.

This was a request merely for an extension of time. That did not affect the ultimate disposition of the case because it would not have been argued before that term, and as I think you know, the appeal was perfected subsequently, and McLaren said I see no harm in it, and I then called the Solicitor and he came in.

Senator KENNEDY. Now, can you tell us when you read the letter? Did you read Mr. Walsh's letter?

Mr. KLEINDIENST. Well, I think I read the letter comprehensively and thoroughly for the first time during these hearings.

Senator KENNEDY. So, at the time that you made your decision, it was really based on the representations that were made by Mr. McLaren as to what the substance of the letter was?

Mr. KLEINDIENST. Right, and also his characterization and representation as with respect to what the issue was in the memorandum of law, and the letter.

Senator KENNEDY. Well, now, having read the letter in connection with these hearings here, what do you think was meant by Mr. Walsh when he said, "It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration."?

Mr. KLEINDIENST. Well, I do not like to speculate as to what Judge Walsh thought.

Senator KENNEDY. Well, you do not—did you have any reason to believe that they had views?

Mr. KLEINDIENST. No. I did not know.

Senator KENNEDY. Were you at any time in contact with the Secretary of the Treasury, or the Secretary of Commerce, or the Chairman of the President's Council of Economic Advisers about this case?

Mr. KLEINDIENST. No. No.

Senator KENNEDY. About antitrust policy generally?

Mr. KLEINDIENST. No. Well, other than—I never had a conference with Secretary Stans, or the Secretary of the Treasury, about the antitrust policy. I know that just based upon the general statements, public and otherwise, that Secretary Stans had some very sharp differences with the antitrust policy of the Department of Justice, as enunciated by the Attorney General, and effectuated by the Assistant Attorney General McLaren, and there were a lot of other people who sharply disagreed with Judge McLaren's policy, as enunciated by the Attorney General, and supported by the Attorney General, myself, and the President of the United States.

I might have the order wrong.

Mr. McLAREN. May I add a word, Senator Kennedy?

Senator KENNEDY. Yes.

Mr. McLAREN. I think it is fair to say that at the time we did have underway an overall antitrust kind of review going on; and I know that there were meetings going on at that time.

There was an interagency thing. I was one of the principals on it. I do not know whether or not there was any connection between this letter of Walsh's, as to which Mr. Kleindienst is perfectly right, I did disagree.

For example, he said in there, as I recall, that our policy was stopping perfectly normal, legitimate mergers that had nothing to do with effects on competition, and I strenuously argue with that.

Other parts of his legal pitch I very much disagree with. But, I—it subsequently developed that there was no connection between what he was saying and the—and no connection ever developed between what he was saying and the antitrust review we then had underway.

Senator KENNEDY. Well, Mr. McLaren, after reading the letter, particularly the part which reads—

It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration.

—do you remember mentioning that to Mr. Kleindienst when you gave him your summation of the letter?

Mr. McLAREN. I do not specifically remember it, Senator, but those agencies all had representatives on this group that was reviewing antitrust policy overall.

Senator KENNEDY. And actually, some of those—wasn't that primarily the reason for the extension, as stated in the Solicitor General's presentation?

Mr. McLAREN. That is the reason I did not oppose it. If we were talking about a straight legal proposition, as to whether or not they should have an extension, I would—I would not have agreed with that. But, for a kind of a policy review thing, I was interested to hear what developed. My information at that time was that he was—or my feeling at that time was that he was wrong.

I thought that Dr. McCracken, for example, was very much in favor of our antitrust policy, and I have never heard, although we had differences on the specifics, I never heard that Secretary Stans or the Treasury people were against it, and I subsequently turned out to be right. We had the extension, but we went ahead and filed the brief.

Senator KENNEDY. Was this the first time that you thought that the Secretary of Treasury, and of Commerce, and the Council of Economic Advisers, would have views on this particular case?

Mr. McLAREN. Well, we had been working on this project for some length of time.

Senator KENNEDY. Well, so that did not come as anything very new to you, did it?

Mr. McLAREN. The new thing was simply, Senator, Mr. Walsh's suggestion in the thing, and we were up against a filing date, and we simply allowed time to explore that. As it turned out, there was nothing to it.

Senator KENNEDY. Can you tell us what you found particularly persuasive about the Walsh letter that would have been the basis for—

Mr. McLAREN. I say again, I strongly objected and was not persuaded as to the legal aspects of it.

However, as to the, particularly finding out that Mr. Kleindienst was not particularly persuaded or had no views on the thing, I had no particular objection to an additional extension of time. As I said before, extensions of time in cases like this are not novel or unusual.

Senator KENNEDY. So, we have a situation here where Mr. McLaren disagreed with the letter, and Mr. Kleindienst, you had not read it,

and the Solicitor General had told you there would have to be an awfully good reason, according to his memorandum, to go for an extension, since you were 9 days late, but you went ahead and ordered the Solicitor General to go ahead and get a last-minute extension, anyway?

Mr. KLEINDIENST. I guess when I asked him to do it, he could have construed that to be an order, and he did it. We asked him to do it, and he did it. I think if the Solicitor General had said no, just absolutely not, I do not think this is proper——

Senator KENNEDY. Do you think the Solicitor General——

Mr. KLEINDIENST. If he had said that to me, I would not have said then, "Well, Solicitor, I order you to do it." I would not have done that.

Senator KENNEDY. Do you think the Solicitor General understood fully the merits of the situation, the reasons for the delay, and on the basis of that felt that there was a sufficient reason to ask for the delay?

Mr. KLEINDIENST. I would not care to speculate what he understood, Senator Kennedy.

Senator KENNEDY. I am just trying to find out how involved he was, just in terms of the merits of the delay. Did he just come in and you said, "Well, we are going to delay it," or did he come in and participate in these discussions with you and Mr. McLaren, and then say, "I think that based upon these kinds of considerations it should be delayed"? I am just trying to find out.

Mr. KLEINDIENST. He was there just a very few minutes. I would not care to speculate what he understood.

Senator KENNEDY. Well, what—during the time that he was there, can you give us any idea as to the way that the conversation went?

Did you say, "Dean, we have got a situation here, and we are going to"——

Mr. KLEINDIENST. To the best of my recollection, Senator Kennedy, McLaren and I had had a conversation about it in advance, Judge McLaren had the Walsh letter and the memorandum of law with him, a discussion was had about it, and I requested the—we requested the dean to do it, and he said he would.

Senator KENNEDY. May I continue? I think my time—may I continue?

Mr. KLEINDIENST. I don't care.

The CHAIRMAN. Go ahead.

Senator KENNEDY. Now, at this time, had Mr. Rohatyn called you?

Mr. KLEINDIENST. I am sure he had.

Senator KENNEDY. He had called you?

Mr. KLEINDIENST. Prior to that Monday, I am sure he had, but I do not know the exact date. But, I am almost certain because he was scheduled to be in my office on the 20th, Senator Kennedy.

Senator KENNEDY. Do you remember whether he called you at home or called you at the office?

Mr. KLEINDIENST. Oh, he called me at my office, I am sure. I have an unlisted phone at home.

Senator KENNEDY. It would have been probably about the 18th, would it, or it was a Sunday——

Mr. KLEINDIENST. The 18th was a Sunday and no, he would not have called me at home, Senator Kennedy. Probably prior to the 17th or 18th, but I do not recall.

Senator KENNEDY. Now, did you mention to Mr. McLaren at the time that you were visiting before the Solicitor General had come up that Mr. Rohatyn had called about this case?

Mr. KLEINDIENST. Oh, sure. That meeting—no; that was the 20th. I do not believe I did. I might have, but I do not believe I did, Senator Kennedy.

Senator KENNEDY. And you had not, even though you were meeting with Mr. McLaren that day—you may have or may not have, and you cannot remember that, but you did not feel there was any necessity to invite him to the meeting that you were going to hold the next day with Mr. Rohatyn about this case?

Mr. KLEINDIENST. No; I did not tie or associate the Walsh letter to the *Grinnell* case, or with the request by Mr. Rohatyn that he come in and discuss with me the economic and financial consequences of a divestiture of Hartford. There was not any reason to have an association with respect to this situation.

Senator KENNEDY. Mr. McLaren, as I understand what you have mentioned here, you basically disagreed with the thrust of the Walsh letter; and do you say in effect that Mr. Kleindienst was overruling you when he gave the order to the Solicitor General to ask for the delay?

Mr. McLAREN. No; I do not think he was overruling me. I think that he, as he has indicated now, he had not really focused on the legal arguments here, and when I, as I can best reconstruct or recall, made the points of my disagreement with Walsh insofar as the legal points that he was arguing, and found that Kleindienst was not particularly impressed with them, I did not, I did not care about an extension for these other reasons.

In other words, if you follow me, I did not particularly want to go along with an extension of time on the basis that we in the Department were saying, Well, maybe we have been wrong here, and we are wrong on our “bigness is badness” program, and we are stopping perfectly legitimate mergers.

And when I found that that was not the basis that Kleindienst was talking about, and he really had not given it any consideration, I did not care about an extension one way or the other, to let them talk with other agencies.

Senator KENNEDY. Of course, as far as the legal arguments go, you would have to gather from that letter that Mr. Walsh was in sympathy, not sympathy, but recognized the legitimacy of the position of the Department and felt that at least as far as the Supreme Court was concerned, it was compelling?

Mr. McLAREN. Well, Senator, I think we have covered this like two or three times. I went into that settlement.

Senator KENNEDY. All you have to do is just—all right.

Mr. McLAREN. I went into this settlement on the basis that I thought there was a good chance of winning. I also knew there was a chance of losing; right? Say it is 60 to 40. All right, as a lawyer, I analyzed it.

A 60-percent chance I win, and then I think later when I get all of this information, can we really afford to win, and then have these disastrous consequences, or is there another way around.

On the other hand, we have got a 40-percent chance that we will lose. All right, if I lose, my whole program is down the drain, so I look for some sort of a solution where we would purge their violation and where we would still get—have a program, and we still have a deterrent.

And if you pare away all of these things, we made them divest, take away Avis, take away Levitt, take away the Grinnell Fire Insurance, take away the two life insurance companies and Canteen, if that had been the *ITT* case we were dealing with at the time we filed the Hartford, we would not have sued them for acquiring Hartford, and that is the kind of settlement we worked out.

Now, when we are dealing here with the *Grinnell* appeal, I think you know now from the papers that we have turned over that there were substantial questions in the minds of other people.

The Solicitor General's office, I think, was commonly conceded to be the most skilled Supreme Court watchers in the country, and they indicated that we had problems.

So, I think we have gotten very far afield from the original purpose of this inquiry.

Did I ever answer your question?

Senator KENNEDY. Were you looking for a case—it would certainly appear from what you have remarked earlier in the course of these hearings, as well as your statements, speeches, as well as Mr. Kleindienst's statements, the Attorney General's, that this was the key test case for the Department of Justice's antitrust policy. What I am trying to at least clear up in my own mind is whether you were looking for a settlement or looking for moving ahead on this before the Supreme Court, based upon a whole series of statements, speeches, interviews which you had had for some 2½ years on it?

Mr. McLAREN. Well, that is right, you have got to keep that time frame in mind. After all, at this point we had been through *Grinnell*, and we have a very capable trial judge who writes devastating findings of fact against us. And you cannot just say, "My theory is going to go get a trial." You have got to look at your vehicle, and that vehicle was not only the law, which I firmly believe we were right on, but some very bad findings.

Mr. KLEINDIENST. Also the appeal was perfected in the *Grinnell* case, Senator Kennedy.

Mr. McLAREN. We did perfect the appeal, after all. It is just a question of giving, taking a little more time to file our brief.

Senator KENNEDY. Well, now, could you tell us, then, Judge, what you thought was particularly persuasive in the Walsh letter, or what you felt was new that you—

Mr. McLAREN. I repeat the answer, I did not find it particularly persuasive. I just said I did not care if there was an extension of time on that ground because I did not think they were going to get anywhere.

Senator KENNEDY. But, if you can understand the Solicitor General's point of view, he thought there would have to be a weighty matter or a matter of considerable importance in order to ask for the delay, and you are suggesting now—

Mr. McLAREN. Senator, you know that he had some reservations about this appeal in the first; do you not?

Senator KENNEDY. But, that was not the basis, as I understand from Mr. McLaren, for moving ahead on the delay.

Mr. McLAREN. Do you think he would have been sorry if I said, "Maybe I guess we oughtn't to file this at all"?

Senator KENNEDY. You are suggesting here it really did not make much difference whether or not he did, in fact, seek the extension on the basis of the Walsh letter. Yet the Solicitor General said he needed a very good reason for it, and you are stating you did not find any very good reason.

Mr. McLAREN. Senator, do you not think it would have been a very good reason if all of these Cabinet people he mentioned came in and said, "Well, the Justice Department is on a track that is bad for the country," and that probably would have been a pretty good reason. But, that did not happen. We filed it.

Now, you asked me another question that I did not get a chance to answer. You said: Are we in the business of settling these cases, or are we in the business of trying them. You know that we settle approximately 80 percent by consent decree.

Senator KENNEDY. Well, it is my understanding, and of course I may be very wrong about it, that this was the key case in terms of determining antitrust policy of the administration.

Mr. McLAREN. Well, as I said before, you have to put in the time frame.

Senator KENNEDY. This is not ordinary, as I understand. I may be very wrong, but as I understand, this was the key case.

Mr. McLAREN. Well, I think your understanding is wrong. There were three, or four, or five key cases, and if I could have gotten all three ITT cases before the Supreme Court, together, I think that would have been a very key proposition. But as of this time my key vehicle, if it was *Grinnell*, was not looking very good.

Senator KENNEDY. Well, as I understand what you have mentioned—

Mr. McLAREN. According to some, anyway.

Senator KENNEDY. As I understand it, the new kind of issue or at least the consideration in your outlook was the part of the letter that suggested that these other agencies of Government were now taking a look at this. Do I understand you correctly? And, therefore, you thought that their input ought to be at least considered, since the merits of the case would not be affected by a delay.

Is that a fair statement?

Mr. McLAREN. Senator, I have answered that three or four times.

Senator KENNEDY. Could I just get back? Is that a fair representation?

Mr. McLAREN. No, I do not think it is, because I answered you before.

Senator KENNEDY. Well, then, could you tell us what additional information you thought you were going to get, coming from the agencies which had not really—

Mr. McLAREN. I answered that before, too. I told you that I do not think there was going to be any information coming, and since I did not think so, I did not particularly care whether there was an extension of time.

Senator KENNEDY. You did not really care, then, if there was an extension of time, so who did care?

The CHAIRMAN. He said on that ground.

Senator KENNEDY. Could I have an answer to that? Who did care whether there was an extension, if you did not, and Mr. Kleindienst had not read the letter?

Mr. McLAREN. I guess Judge Walsh cared.

Senator KENNEDY. And ITT cared?

Mr. McLAREN. I think that there was not any reason that we should not have listened to whatever came in.

Senator KENNEDY. Now, Mr. Rohatyn—or is it Rohatyn?

Mr. ROHATYN. Mr. Rohatyn, Senator. [Indicating pronunciation.]

Senator KENNEDY. About the Walsh letter, first of all there is a discussion about the views of the other agencies. The Walsh letter points out that:

It is our understanding that the Secretary of the Treasury, the Secretary of Commerce and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration.

That certainly suggests that the ITT people had been busy in several other departments of the Government besides Justice, and I was wondering if you had any knowledge or information about that.

Mr. ROHATYN. Sir, I have never seen the Walsh letter. I did not see it at the time, so I really cannot comment on that.

Senator KENNEDY. Well, other than the letter, this is what it said, that they were in contact with the other agencies of the Government.

Can you answer from your information whether you know that there were other contacts with other agencies by ITT?

Mr. ROHATYN. Sir, I cannot comment specifically about the agencies. I can tell you that Mr. Geneen has always been very evangelical about his feelings that Mr. McLaren was about to destroy the company, the economy and the country, and I think that he made his case as forcefully as he could, to every Government official that he could ever talk to.

Senator KENNEDY. Do you know if any other contacts were made?

Mr. ROHATYN. I do not, Senator.

Senator KENNEDY. Would you know if they had been?

Mr. ROHATYN. Not necessarily.

Senator KENNEDY. Were you in touch with Mr. Stans?

Mr. ROHATYN. No, sir.

Senator KENNEDY. You never talked to Mr. Stans?

Mr. ROHATYN. About ITT?

Senator KENNEDY. Yes.

Mr. ROHATYN. No, sir.

Senator KENNEDY. Or anyone in the Treasury Department?

Mr. ROHATYN. No, Senator.

Senator KENNEDY. Could ITT have been in touch with these other governmental agencies?

Mr. ROHATYN. Certainly.

Senator KENNEDY. Without your knowing about it?

Mr. ROHATYN. Yes, sir.

Senator KENNEDY. Mr. Geneen would not have mentioned that to you when he was asking you to make the economic argument to Mr. Kleindienst, that we have got some other things either moving or going on in some of the other departments?

Mr. ROHATYN. I do not recall him doing so, sir.

Senator KENNEDY. Would there be any—you are on the executive board of ITT?

Mr. ROHATYN. On the executive committee, Senator.

Senator KENNEDY. And this was never talked about in the executive committee?

Mr. ROHATYN. No, Senator, not until July 14.

Senator KENNEDY. Now, Mr. Rohatyn, can you tell us how it is that Mr. Walsh can say in his letter that he believes ITT is going to lose in the Supreme Court, and at the same time that ITT was filing a prospectus with the SEC, stating that the ITT lawyers felt they were going to win in the Supreme Court?

Mr. ROHATYN. I do not know, Senator.

Senator KENNEDY. Well, should you know?

Mr. ROHATYN. I can only repeat to you, Senator, that the legal advice we always had from our attorneys was that we were on sound legal ground, that we won every legal case, and I believe on that basis whatever disclosure was appropriate in those registrations were made, but that is all I can comment on it.

Senator KENNEDY. Is this the feeling of Mr. Geneen, too? I mean, is this the thought he was going——

Senator COOK. Mr. Chairman, does this witness know what Mr. Geneen thought or felt?

Senator KENNEDY. Can we ask the questions, or are we going to be interrupting?

Senator COOK. I might say——

Senator SCOTT. Mr. Chairman, every member has that right.

The CHAIRMAN. I——

Senator COOK. I am going to take 40 minutes when my turn comes.

Senator SCOTT. Every Senator has that right.

Senator KENNEDY. As I understand, it is not up to the Senator whether we yield or not, is my understanding on it.

Could you tell us from your conversations with Mr. Geneen, did he feel that ITT was going to prevail?

Mr. ROHATYN. Senator, I think I testified the other day, when I was asked why we settled when we thought we had such a good case, that no lawyer could ever tell you there was absolutely no risk of taking these cases all the way up.

So, there is no question in my mind, and I believe there was never any question in Mr. Geneen's mind that there was a risk involved. At what point it became advantageous for us to settle or it became an acceptable risk as opposed to the risk of taking all of these three cases all the way up, that was a judgment question.

Senator KENNEDY. But at least he was concerned about the prospects of success in the higher court, the Supreme Court?

Mr. ROHATYN. We were concerned, yes, Senator.

Senator KENNEDY. In your conversations with Mr. Geneen, did he express a view similar to Mr. Walsh's about the prospects of success in the Supreme Court?

Mr. ROHATYN. Senator, I cannot characterize my conversations with him that way.

Senator KENNEDY. Well, how would you?

Mr. ROHATYN. Well, I can give you a concrete example, if it helps you, about our attitude.

Senator KENNEDY. Fine.

Mr. ROHATYN. And that is as late, as I would say maybe July 27 or 28, I do not believe we would have agreed to the settlement that was proposed by Judge McLaren. That is my personal belief.

Senator KENNEDY. Do you know, Mr. Rohatyn, what Mr. Walsh meant when he said he understood Mr. Kleindienst had already been consulted?

Mr. ROHATYN. I have no idea, Senator.

Senator KENNEDY. Isn't that really what you were told to—

Mr. ROHATYN. That he was consulted, Senator?

Senator KENNEDY. Or that he was going to be consulted or receptive to an economic argument? I think you testified to that.

Mr. ROHATYN. I testified that I was asked and told that he would see me to listen to an economic argument; yes.

Senator KENNEDY. So, this is really sort of consistent with the provisions of the Walsh letter about, I guess it is, prior consultation?

Mr. ROHATYN. If that is what he meant by consultation, then it would be.

Senator KENNEDY. But, you do not know whether ITT had consulted him?

Mr. ROHATYN. I did not know, Senator.

Senator KENNEDY. I would like to yield, Mr. Chairman, to some of the others.

The CHAIRMAN. OK. You have had 35 minutes.

Roman?

Senator HRUSKA. Mr. McLaren, are you familiar with the general situation that prevailed when North American and Rockwell merged?

Mr. McLAREN. I think that was before my time, Senator Hruska. I just know about it from the newspapers.

Senator HRUSKA. Don Turner was then head of the Division, and the situation there was that a settlement was made.

Mr. McLAREN. Yes, sir.

Senator HRUSKA. Not only was a settlement made, but the acquiescence in that merger was based upon the requirement that each of those two companies would divest themselves of certain of their subsidiaries who were in competition with each other.

Mr. McLAREN. That is my recollection; yes, sir.

Senator HRUSKA. Is that not an analogous situation to this one, insofar as the terms of the consent agreement actually consummated by you regarding the ITT case?

Mr. McLAREN. It is along the same lines.

Senator HRUSKA. To wit: Those companies that were competing with each other had to be divested?

Mr. McLAREN. That is right, and I think they felt that purged the violation.

Senator HRUSKA. The objective was achieved of cranking into that entire industry picture a requirement of competition, and a prevention of deterioration of competition. Is that not the thrust of the rationale for the antitrust laws?

Mr. McLAREN. That is my understanding; yes, sir.

Senator HRUSKA. It is certainly the one you have explained to our committee many times, and the same is true of your predecessors.

What percentage of cases did you say were settled where merger problems were presented to your department or your division?

Mr. McLAREN. Well, it is an overall figure, Senator. It is around 80 percent of all of our cases are settled by consent degree.

Senator HRUSKA. Well, it is my hope that we in this inquiry will not be asked to go into the balance of the 80 percent that were settled,

because we would be here until a year from now, without achieving very, very much. Because, after all, this committee does not operate the Antitrust Division. It is the Antitrust Division that operates it.

That is all I have right now. I will yield the balance of my time.

The CHAIRMAN. Hugh?

Senator SCOTT. No questions.

The CHAIRMAN. Senator Cook.

Senator Cook. Mr. Chairman, before I start, there is something that I would like to read into the record, if I may.

Mr. Chairman: The other day I advised both the witness, Dr. Victor L. Liszka, and the committee of possible violations of medical ethics and of the laws of the Commonwealth of Virginia on doctor-patient privileges concerning his testimony about his patient, Mrs. Dita Beard.

It is no surprise, therefore, that we now find, according to a news story in this morning's Washington Post, that Dr. W. Leonard Weyl, president of the Arlington Medical Society, said that the society's 15-member executive committee plans to review a transcript of Dr. Liszka's testimony before our committee in regard to possible violations of the American Medical Association's Code of Ethics.

While we are all genuinely interested in bringing this question of the relationship between the Department of Justice, the *ITT* case and the relation to the Republican Convention in San Diego to a conclusion, I believe we should also be concerned about the rights and privileges of others. Because of the committee's failure, and possibly because of Dr. Liszka's failure to fully comprehend and appreciate the laws of the State of Virginia and the Code of Ethics of the American Medical Association, I am not surprised that Dr. Liszka may be in some jeopardy. It is shocking that some of my colleagues could care less about this privilege.

It is all the more disturbing when one considers that my Democratic colleagues who were so unconcerned about the laws governing the doctor-patient privileges would on the next day urge the Senate of the United States to file an *amicus curiae* before the Supreme Court in order to preserve the confidential privileges of one of our colleagues, at the expense of the taxpayers.

I might also say, Mr. Chairman, that I want the record to show that while the Senator from Massachusetts was asking Mr. Kleindienst what Judge McLaren thought, that the Judge was sitting to the immediate right of the witness. Apparently the best evidence rule is also meaningless.

Now, Judge McLaren, in seeking to dispose of 80 percent of the matters that come before your department, either by reason of consent decree or otherwise, how many times would you consider that it may have been necessary to ask for an extension, either at the Supreme Court level or at lower court levels?

Mr. McLAREN. Well, I would think that dozens, at least.

Senator Cook. I hope it would not be necessary, really, to ask you to bring in all of these cases that it has been necessary to ask for extensions of time in, because I think if anyone really has had an opportunity to practice very much law in the Federal courts, one will find that it is not unusual, that it is really routine, to ask for extensions of time.

This was an extension of 10 days, was it not?

Mr. McLAREN. I think it was 30 days, Senator.

Senator Cook. All right. Was it necessary in regard to having filed to get that 30-day extension, would it have been necessary to have tried that case before the Supreme Court in that term, or would that case have been laid over to the next term, anyway?

Mr. McLAREN. It was going over to the next term, anyway.

Senator Cook. So really, the 30 days was merely for the purpose of what may have been necessary or would have been required by

the court to make the record complete for the purpose of trying the case, which could not have been tried in that term of court, anyway?

Mr. McLAREN. That is right.

Senator COOK. So, therefore, it really was not of any great significance?

Mr. McLAREN. That is correct.

Senator COOK. Now, it seems to me that you did not take the action you took in agreeing to the extension with any idea whatsoever that the appeal of this case would not be perfected, is that correct?

Mr. McLAREN. That is absolutely right.

Senator COOK. As a matter of fact, you did perfect the appeal in that case, did you not?

Mr. McLAREN. That is correct.

Senator COOK. And the only reason that case was not tried in the Supreme Court of the United States is because by reason of the consent decree ITT was divested of that company; is that correct?

Mr. McLAREN. The offending part of the fire protection.

Senator COOK. The Grinnell Fire Division?

Mr. McLAREN. That is correct.

Senator COOK. So, therefore, they were divested and the purpose of the suit, and the purpose of the appeal was accomplished, was it not?

Mr. McLAREN. Yes, sir.

Senator COOK. By reason of the fact that the divestiture did, in fact, occur?

Mr. McLAREN. Well, it has been ordered to. I do not think it is in effect, actually.

Senator COOK. Well, the same thing would have occurred in a judgment of the Supreme Court of the United States, would it not?

Mr. McLAREN. It is conceivable that we would have gotten a complete divestiture of Grinnell, but it would have been a long way down the road. The Supreme Court, if we were successful, would reverse the order and order it back to the district court, either for a new trial or for a hearing on remedy, and we might very well have come out with the same results as a divestiture of that part of the company that was the offending aspect of the acquisition.

Senator COOK. As a matter of fact, while we are trying to presuppose what everybody thought, or consented to, or agreed to, or did not agree to, the fact that you wished to divest the Fire Insurance Division of Grinnell, and Leavitt, which contained two life insurance companies, was because they were hanging on to an insurance company, was it not?

Mr. McLAREN. Yes, plus the others. This all—all insurance related; yes, sir.

Senator COOK. That is the point?

Mr. McLAREN. Yes.

Senator COOK. And you would have assumed if the Supreme Court had agreed, and we are going now on assumption, but we have been doing that ever since these hearings started, one would have assumed if it went up on the insurance question that it is conceivable that the Supreme Court would have divested it of its insurance interests if it had allowed it to hang on to a major insurance company?

Mr. McLAREN. Well, that is terribly speculative, but that would have been one way to purge the thing of its anticompetitive aspects.

Senator COOK. The anticompetitive aspects within the insurance field?

Mr. McLAREN. That is right sir.

Senator COOK. And, therefore, that was accomplished by your division; was it not?

Mr. McLAREN. It was, sir.

Senator COOK. Because they were divested of all of the insurance facilities. They were alined with Avis, alined with Leavitt, and alined with Grinnell and allowed to maintain one insurance company, is that correct? Hartford?

Mr. McLAREN. Plus Canteen.

Senator COOK. Plus Canteen. But, I am talking about the insurance field.

Mr. McLAREN. Yes, sir.

Senator COOK. That is when the director of the company and apparently the president, by innuendo in these hearings, decided that you were a menace to the United States, and you were going to ruin business in this country?

Mr. McLAREN. I do not think I have any comment on that. I would like to add though, Senator, that I filed 180 cases in the 3 years—and if the 80-percent rule is right, we must have settled by consent decree somewhere around 140 or so.

Senator COOK. Well, I am sorry you brought up the figure because you are liable to have to bring the consent decrees on all 140 of them into this file before we are through.

Senator HRUSKA. Would the Senator yield briefly?

Senator COOK. Yes.

Senator HRUSKA. When you give that 80 percent figure, Judge McLaren, does that pertain to your administration, or does it pertain to the Antitrust Division as it has been operating during the past few years?

Mr. McLAREN. That is an average over the years, Senator.

Senator HRUSKA. A decade or more; certainly?

Mr. McLAREN. Yes; at least, I think.

Senator HRUSKA. So that whatever settlement ratio there was while you were the Assistant Attorney General in charge of that Division it was not a departure from past practices?

Mr. McLAREN. No.

Senator HRUSKA. From the procedures and the way in which that division had been operated under your predecessors?

Mr. McLAREN. No departure. We just filed more cases.

Senator HRUSKA. That I am aware of. That I am aware of. I would say rather than being a badge of demerit, I would say that it is a badge of merit.

Mr. McLAREN. Thank you, Senator.

Senator COOK. Mr. Kleindienst, I would like to ask you a question.

Because of the importance of the 30-day extension for the filing of pleadings, and the filing of whatever material the court had requested, when the case could not be tried in that term of court anyway, can you tell this committee whether you have had members of the Congress of the United States come to your office and ask if something could be delayed 10 days, 20 days, or 30 days, both Republicans and Democrats, that did not go to the substance of the matter, but really asked for additional time so that something might be accomplished

to the benefit not only of the Justice Department but of the party concerned?

Mr. KLEINDIENST. That is a very common occurrence, either coming to my office, or calling me on the telephone, and as a responsible officer of the Department of Justice, and as a lawyer, so long as it does not prejudice, you know, the interest in favor of the U.S. Government, I think that we have a responsibility to, wherever possible, to permit that kind of thing to occur.

Democrats, Republicans, Senators, Congressmen.

Senator COOK. And this did not prejudice the case in question because the appeal was, in fact, perfected; was it not?

Mr. KLEINDIENST. That is correct.

Senator COOK. Thank you.

Thank you, Mr. Chairman.

Senator SCOTT. Mr. Chairman, could I make one comment, please, sir?

I would like the record to show that I inserted in the Congressional Record yesterday a statement by Mr. Richard Herman, chairman of the arrangements committee of the Republican National Committee, issued as a public press release on the 29th of November last, wherein Mr. Herman made the point that the Sheraton Hotel had offered some money or services to the city of San Diego to enable it to compete for the convention. At that time I understood the amount involved was allegedly \$100,000. Mr. Herman first expressed—made the flat statement that no such offer would apply to the Republican Party or the Republican Committee, but to the city of San Diego, and that he felt that the offer should be refused as representing a disproportionate part of the total expenses of the city of San Diego.

Now, that has been in the public domain since the 29th of November. I rarely see it mentioned. The fact is that the Republican Party disavowed this suggestion and urged the city of San Diego not to accept it.

And I think that ought to show clearly in the record. If necessary, I will repeat that every day.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gurney?

Senator GURNEY. Thank you, Mr. Chairman.

Senator SCOTT. Either the 21st or the 29th of November.

Senator GURNEY. I do not have any questions at this time. I do have an observation to make.

We have been at these hearings now for several days. I do not know how many hours. As far as these three witnesses are concerned, I do not think we have discovered any additional, new or different material after the first 2 hours they were here. The same questions have been asked not once, not twice, not five times, not ten times, but a score or more times, repetitious, over and over and over.

We are tying up the Acting Attorney General, a busy Federal judge here, Mr. Rohatyn, and we are not getting at the truth of this matter at all.

We should be calling Mr. Anderson, we should be calling Mr. Mitchell. We need to hear from Mrs. Beard, and we need to get at the truth of what this is all about, which we are not doing. And as one member of the committee, I must say that I think our exhibition here is far from responsible as a committee of this U.S. Senate, and I hope

we can stop this charade after a while and get to the truth of this matter, through the witness that we need to call.

Thank you.

Senator HART. Judge McLaren, on Thursday I asked if there had been any check made to determine whether there was any possible conflict of interest—I think this is a new question—when you engaged Mr. Ramsden and on page 47 of the typewritten transcript you said, “Yes, I am sure that I do not remember specifically doing that, but that would be part of our procedure, Senator.”

Have you had an opportunity to inquire whether any check on possible conflict on the part of Mr. Ramsden was done, or was your procedure?

Mr. McLAREN. We do not seem to have anything in the files Senator. I think that as I testified yesterday, that as best I can reconstruct it now, I telephoned Peter Flanigan, and it may have been I simply telephoned to ask him for Ramsden’s location, telephone number, and so on, and he may have said, do you want me to get ahold of him for you? I think that what I said the other day with regard to making a check, that would be the normal thing; I recall that we did check and discuss the question of possible conflict and so on, when we had Ramsden do that study for us with regard to LTV, and I would simply have to say that I relied on him to, and on Mr. Flanigan to work that through. And if he had a conflict, he would say so, and he did not feel that he could take on the job properly, why, we would be so advised. And I felt that Flanigan would ask him and check that angle out.

Senator HART. So, whether there was an effort made to determine whether this outside consultant had any relationship with ITT, which might provide a conflict, the Department of Justice in this situation, in a sense, relied on Peter Flanigan to make such check, if any; is that right?

Mr. McLAREN. And our prior experience with Mr. Ramsden; yes.

Senator HART. I am trying to find out whether in that prior experience or otherwise the Department has any knowledge about the background associations and possible conflicts of Mr. Ramsden in analyzing an ITT matter.

Mr. McLAREN. No. As of the time of the LTV thing, I remember reviewing with him whether there would be any conflicts, and so on, and we came to the conclusion there would not, and that is I think a fairly standard thing.

I mean, Senator, suppose you have used a lawyer, and you have gone in and talked with him and say, did you have any conflict on this, and then you have another case, and you go in and start talking to him about retaining him, and so on. You expect him to come up with the fact that, no, I have got a conflict.

Senator HART. Well, is that really the way, though? Is that really the way we do it in the Federal Government? That would suggest that if you find that a man has no conflict with Ling-Temco-Vought, that it is assumed thereafter there is no conflict on any other matter unless he tells you so.

I do not think it works that way. Doesn’t he have to file some statement, or if he does not have to file a statement, is there not some continuing need to insure against such a conflict?

Mr. McLAREN. Well, the first time we used him, as I recall, he was employed by the Federal Government, and I do not know that I knew anything different when we retained him the second time.

Senator HART. Well, I am told that there is an Executive order which makes some explicit requirement with respect to any agency that employs a consultant that it shall require the consultant to supply it with a statement of all other employment, I would assume in the setting here that some place or other there must be some identification of the background of Mr. Ramsden, because Mr. Ramsden was referred for an analysis of all of these catastrophic consequences that had been suggested.

If Justice does not have any statement of analysis or comment from Mr. Ramsden with respect to his relationship, if any, with ITT, would it not be logical to inquire of Mr. Flanigan whether he got it, or whether anybody else got it?

Mr. McLAREN. I think Mr. Ramsden in an interview indicated, if the news report of it is accurate, that it pretty well told the story. As I gathered it, his credentials were on file in the Government and he continued and was paid—excuse me—for this particular job as a part of a retainer, or whatever the arrangement was, where he was already working for the Government.

Senator HART. It is our understanding that he was working for the Government when he did this analysis.

Mr. McLAREN. I understood that he was paid by the Commerce Department, Senator, and was under some continuing arrangement with them.

Senator HART. Well, then, if my information is correct that a consultant in that sense is required to have a statement of financial interest and associations, it may be that Commerce has such a document, and we will make appropriate inquiries.

I yield the balance of my time to the Senator from California.

Senator TUNNEY. Thank you.

Thank you, Mr. Chairman.

Mr. McLaren, I think in fairness to you I should indicate why I am so strongly interested in the manner at which you arrived at your decision in this settlement.

As I understood your testimony yesterday, you said that there were four cornerstones in your decision. One was your 25 years of experience, one was the presentations and representations made by Mr. MacLaury of the Treasury Department, one was Mr. Ramsden's report which you had the opportunity to read, and one the ITT presentation.

Now, what concerns me is that there are very serious questions raised about some of these cornerstones. ITT made one presentation to you, according to your testimony, after 2 years of work by your department, and raised issues which would seem to have been obvious before the suit was ever filed.

Second, Mr. Ramsden never had any contract with you, and got all of his instructions on what he was to do from Mr. Flanigan of the White House.

Three, the Treasury Department says that March 3, 1972, in a statement:

On the basis of information provided by ITT at the meeting, information not verified by Treasury, Treasury stated orally and informally to Justice that there was merit to the ITT position.

Mr. MacLaury is further quoted in the press as saying, and I quote:

It was really quite informal. It was not a thorough, in-depth investigation.

Mr. McLAREN. I think he meant by that, assuming he said it, and I have not seen the report in the press, nor have I talked to Mr. MacLaury, that he did not personally go through the thing and work out to a dollar figure the amount he felt would be the loss.

Now, the fact that he concluded that there would be a fairly staggering loss to ITT, I think, is something that I should probably and properly, as a public official, take into account. But, you know, I have gone through all of this about three times, Senator.

Senator TUNNEY. Yes; we have been through some of it.

Mr. McLAREN. Ask me a question that we have not covered before, then.

Senator TUNNEY. Well, we will get to some questions that I have not covered before.

Now, it is my understanding——

Senator KENNEDY. Would the Senator yield at that point?

Senator TUNNEY. Yes.

Senator KENNEDY. I just make as a comment that we have been asking questions over and over again, and would remind our good friend from Florida that as a result of asking over and over again, we found out about Mr. Ryan, which we did not know when we started this hearing. We found out now about Mr. Ramsden, and his contact with Mr. Flanigan, and that we did not find out the first time. And we found out about Mr. Walsh, which we did not find out the first time. Just to remind you that by asking questions over and over again we have found out four very important areas.

Mr. McLAREN. Those are great contributions to the sum of human knowledge, are they not, Senator?

Senator KENNEDY. They are to the American people, I think.

Senator GURNEY. If the Senator will yield?

Senator TUNNEY. I will yield.

Senator GURNEY. None of these great revelations appear to me to have any bearing at all on the business of the consideration of the city of San Diego getting a contribution from ITT that might disqualify Mr. Kleindienst from becoming Attorney General and that is what we are here for.

Senator KENNEDY. Well, we have come here to see how this case is decided, and I think——

The CHAIRMAN. Let us proceed, now.

Senator TUNNEY. Mr. McLaren, with respect to the advice that you did receive from Treasury, could you tell us how you went about arranging for the services of Mr. MacLaury?

Mr. McLAREN. I have already covered that. I am not going over it again.

Senator TUNNEY. You refuse to answer the question of how you went about getting Mr. MacLaury's services? You have answered that question? How you went about getting Mr. MacLaury's services?

Mr. McLAREN. No; I am not going to refuse to answer.

Senator TUNNEY. Who did you speak to in the Treasury Department?

Mr. McLAREN. I talked to Mr. MacLaury. Mr. MacLaury would have been in on the discussions at the time we arranged our settlement with the LTV people.

Senator TUNNEY. Did you speak with him directly?

Mr. McLAREN. I believe so.

Senator TUNNEY. And you discussed with Mr. MacLaury the nature of the study that was to be made?

Mr. McLAREN. I discussed with him the nature of the problem I faced and the kind of help I wanted from him.

Senator TUNNEY. Do you feel that if the U.S. Senate were to pass special legislation allowing for a merger between ITT and Hartford Fire and Grinnell and Canteen that we would be acting responsibly if we relied on the type of information and the amount of information that the Antitrust Division relied on in this case in allowing the merger to go through and in the divestiture?

Mr. McLAREN. Senator, at length you told me yesterday about the tremendous investment we had in investigations in trying these cases. I will say to you that our staff knew a very great deal about these companies, probably more than most of the individuals on the officers' staffs of the company, and I will repeat what I said earlier.

This was a fine settlement for the Government. We had something which looked like a violation of the law. If we moved forward and we got divestiture of Hartford, which would normally follow if we won, we think we have a rather drastic effect not only on ITT, but on the stockholders, and possibly on the economy.

And so we weighed very carefully if we had got, as I said earlier, a 60-percent chance of winning, and that that is the result, whether there is something else we can do that would be better that would not have that result.

On the other hand, maybe we lose this case, and then the whole program goes down the drain. So, we try and work out something in the middle that purges the violation, that reestablishes the effective competitive conditions, that requires this billion-dollar divestiture, and this, and the second part is very important, this stop sign to ITT, they cannot acquire anything again over \$100 million of sales, or over \$25 million of sales if it has got—if it is a leading firm and has a certain percentage of a market.

And, third, we stopped their reciprocity, so I avoid the risk of loss, and I avoid the risk to the economy that a number of what I considered as responsible people felt would happen if we won the *Hartford* case.

And I have yet to hear a suggestion that there is anything wrong with these papers that were presented to you. You have copies of the ITT report. You have copies of the Ramsden report.

Now, if you have got something to say about what is wrong with them, why don't you say it, instead of attacking me for the way I hired the people. This is not an inquiry into Kleindienst qualifications. You are attacking my judgment, and I think it is pretty ridiculous. Some commentator said there was no moral indignation here. I think that it is an absolute outrage the way this committee is inquiring into this matter.

Senator TUNNEY. We are trying to learn the process by which the decision was made.

Mr. McLAREN. Well, then, why don't you do that in the Senate Committee on Antitrust and Monopoly. It has no place in this hearing. You know how the decision was made, and there was no hanky-panky about it, either.

Senator TUNNEY. In a press report on March 5, 1972, it states in the Chicago Times that MacLaury said he could not remember who at Treasury first asked him to participate in the ITT inquiry. He recalls that he reported his findings to Treasury Secretary John B. Connally, but he could not remember what Connally said.

To your knowledge, is that a correct statement of fact?

Mr. McLAREN. I did not read the account, and I have no comment on it.

Senator TUNNEY. Did Mr. MacLaury make his report first to Mr. Connally or did he make it to you?

Mr. McLAREN. I have no idea what passed between Connally and MacLaury. I recall that I discussed it on the telephone with MacLaury, as best I can recall.

Senator TUNNEY. As best you can recall, you talked to Mr. MacLaury?

Mr. McLAREN. Right?

Senator TUNNEY. It is my understanding that there is a report on file in the Commerce Department by Mr. Ramsden that his company had, at the time that he was writing his report, a management control over a portfolio containing approximately \$200,000 of ITT stock. If you had known that at the time that he wrote the report, would you feel that there was any conflict of interest involved?

Mr. McLAREN. As I understand from the press report there were some shares of ITT in a portfolio which belonged to somebody else, that Mr. Ramsden, or Mr. Ramsden's firm, or whatever it was, was managing. If he had told me that this would not prevent him from making a completely objective report on the thing, it would not have bothered me.

Senator TUNNEY. If his report had been in favor of divestiture, would that have had an impact on the ITT stock, an adverse impact? And that is the central question, it seems to me, on this particular point. Would it have had an adverse effect on the ITT stock if his report had been in favor of divestiture, and did Mr. Ramsden, as a partner in the firm, have a fiduciary relationship to that portfolio and to the beneficiaries of that portfolio?

Mr. McLAREN. I have no comment on that.

Senator TUNNEY. As I understand your testimony, the report of Mr. Ramsden was handed or mailed to Mr. Flanigan at the White house, and Mr. Flanigan then transmitted it to you; is that correct?

Mr. McLAREN. To the best of my recollection; yes.

Senator TUNNEY. Did you have, to the best of your recollection, any conversation at the time it was transmitted to you by Mr. Flanigan regarding the details of the report?

Mr. McLAREN. Not that I recall, Senator.

Senator TUNNEY. Mr. Chairman, I feel that the testimony of Mr. McLaren would indicate that Mr. Flanigan's testimony would be needed by this committee inasmuch as he was the one that gave the instructions to Mr. Ramsden as to what was needed in the report, and inasmuch as he received the report from Mr. Ramsden, and inasmuch as Mr. McLaren never had a conversation with Mr. Ramsden about the report, either before or after it was made.

And I would hope that we could invite Mr. Flanigan to testify before the committee.

The CHAIRMAN. Invite who?

Senator TUNNEY. Mr. Flanigan, to testify.

Senator COOK. Mr. Chairman, would the reporter read back the remarks of the Senator from California?

I thought that the Senator from California said that inasmuch as Mr. Flanigan told Mr. Ramsden what was needed in the report, and I am wondering whether the Senator from California has any knowledge that Mr. Flanigan told Mr. Ramsden anything relative to what was needed in the report.

Senator TUNNEY. The report was written as a result of Mr. Flanigan having contacted Mr. Ramsden.

Senator COOK. Well, do you have any knowledge that Mr. Flanigan told Mr. Ramsden what was needed in the report, as to the contents?

Senator TUNNEY. Not as to the conclusions, certainly.

Senator COOK. Thank you. That is all I wanted to get.

Senator TUNNEY. But as to the specifications as to what was needed in the report to satisfy the need for information on the part of the Antitrust Division of the Justice Department.

Senator COOK. You are not indicating in any way that Mr. Flanigan told Mr. Ramsden what he ought to write?

Senator TUNNEY. Not what his conclusion should be. I am saying that he gave the specifications for the report.

Senator COOK. What were those specifications, if you know?

Senator TUNNEY. I do not know.

Senator COOK. Well, then, can you say he gave him specifications?

Senator TUNNEY. Well, the report was written. The report was written.

Senator COOK. Very interestingly, I think what you really ought to do is to get another real financial expert to analyze it and see whether it is a good report or not. I think that would be the best evidence.

Senator TUNNEY. It would be, I think, important to find out what instructions were given to Mr. Ramsden in the preparation of the report.

Senator COOK. Mr. Chairman, I have no objection to having anyone come and testify, and I am not trying to look after anybody in the White House or anywhere else, but I just think one has to be rather cautious when he says that as to what was needed in the report, because I do not think——

Senator TUNNEY. I tried to define——

The CHAIRMAN. Now, wait a minute. This is all a matter for executive session. The Senator knows that I have been very fair with him. I was given a list yesterday afternoon of who you wanted to call, and it was given by you on the Senate floor, and it is a matter for executive session, to be fair with it.

Are you through?

Senator TUNNEY. Yes.

Senator HRUSKA. Mr. Chairman, a little bit ago the Senator from Pennsylvania referred to the release of November 1971, by Richard Herman, who is vice chairman of the Republican National Committee. He was uncertain as to its date. He said either the 21st or the 29th

Actually it was November 30. I ask that the record be correctly accordingly.

And secondly, the Senator did not have with him a copy of the text of that news release. I ask unanimous consent that it be placed in the record.

The CHAIRMAN. It will be admitted.

(The document follows:)

[From the Republican National Committee, Washington, D.C.]

STAR STORY CORRECTED

The Arrangements Committee for the 1972 Republican National Convention has not taken any contributions from either the Sheraton Corporation or International Telephone and Telegraph Company and does not expect to do so, R.L. Herman, vice chairman of the Committee said today.

Herman, who is Republican National Committeeman from Nebraska, made the statement in response to a story in the November 29 Washington Star which indicated that ITT has pledged \$400,000 to help finance the convention.

"Neither ITT nor its subsidiary, the Sheraton Corp., has offered the Republican Party or the Arrangements Committee any money at all," Herman said.

"I understand that an offer was made to the San Diego Civic Committee in order to help San Diego get the convention. If this is so, ITT is to be commended for its civic spirit. However, the Arrangements Committee feels that it would be improper to take such a disproportionate share of the Republican Party's convention needs from a single source.

Herman said, however, that ITT and Sheraton, like most major corporations would be offered opportunities to advertise in the official convention program.

He pointed out that this practice is followed by both the Republican and the Democrat national parties to raise money for their respective conventions. "Proceeds from the program can be used only for convention purposes," Herman said. He pointed out that advertising in the programs is a tax-deductible business expense. "We think that it is entirely fitting and proper that major corporations be allowed to support both presidential conventions openly and forthrightly, just as they are permitted to support any other type of major convention," Herman said.

The CHAIRMAN. Any further questions?

Senator HRUSKA. Mr. Chairman, I would like unanimous consent to submit a brief statement on the relevance of the reference of a matter such as that raised in Judge Walsh's letter to the Department of Commerce, the State Department, and the Treasury Department. It is highly relevant because there is impact upon each one of those Departments, and particularly with reference to foreign markets.

For a number of sessions now the Senator from New York, Mr. Javits, and this Senator have urged the creation of a commission with overall power and responsibility of inquiring into the necessity of a fundamental revision of our antitrust policies.

In the statements that we have made from time to time in the last two or three or four sessions of the Congress, we have undertaken to spell out the necessity to get into facts regarding foreign markets and the inhibitions placed upon American corporations in going abroad and engaging in competition with foreign companies.

The impact of such an inhibition upon our balance of payments and upon the development of our foreign trade are important questions. Both the Johnson Commission on the Antitrust Laws, and the Nixon Commission on the Antitrust Laws recommended that the Webb-Palmatine Act, for example, be repealed.

In his recommendation that the three departments be asked for their judgments, Judge Walsh was eminently correct, not only on a basis of general antitrust law, but also on the basis of this particular merger, inasmuch as the original International Telephone & Telegraph Co. has extensive foreign holdings and foreign operations.

So, with that background, it seems to me, the allegation that the judge's is an unusual and novel approach, that reference of these matters pertaining to the subject be referred to these three departments, is laid to rest.

It is not only logical, in my judgment, it is necessary, and the record, the overall record, and the consistent record of the last 10 or 12 years shows the necessity for that type of approach, going all the way back to 1955 when there was a Department of Justice study of this problem, and where the same field was canvassed and recommendations made.

The CHAIRMAN. Now, you are going far afield.

Senator HRUSKA. I have not gone far afield. It is in reply to many of the suggestions made here, not only today, but 2 or 3 successive days, inquiring into the propriety of Judge Walsh suggesting that this matter be referred to three departments for their comment.

The CHAIRMAN. Marlow?

Senator COOK. I have no further questions.

Senator HART. I have read the report of Mr. Ramsden. All of us have an opinion about its scope and its effect. Mine is worth no more than I am being paid to give it, so I might as well give it.

The theory, as I get it from the testimony, for the position taken by the Department in the consent decree decision was that there were certain overriding national concerns that would require not pushing for the decree that the Department initially sought.

We all understood that when there is a divestiture that there is a loss in market price of the corporation out of which the divestiture is made, in this case \$10 or \$10.50 a share, and given the total number of shares out, more than \$1 billion of direct stockholder loss.

But I think that antitrust experts, of which I am not one, generally agree that that is not a fact that ought to persuade either the Department or a court to avoid correcting a violation of the antitrust law.

In this case it was further suggested, first, that this would have a severe ripple effect on the whole market, and that, second, the divestiture of Hartford would adversely affect our balance-of-payments position because of the restrictions it would impose on ITT offshore subsidiaries to discharge contract obligations.

Now if you read the conclusions of the Ramsden report, I feel that it does not make these points with any great force or clarity. I do not know how many on the committee have read the report, but the conclusions are very short. They are on the last page, and are four sentences.

Now the point is: If it is felt that this is not very significant, then what difference does it make how he was retained and why.

There is reference in one of the conclusions to the hardship on the ITT shareholders. But Ramsden does not suggest anything remotely as strong as some testimony would indicate bearing on the damage to overseas operations or ability to discharge contracts. He points out that the divestiture would possibly impair the credit rating of the parent for two reasons, then he goes on to stress that most of the borrowing by the ITT family was done by its subsidiaries. These loans were made on their own hook, not on the basis of a guarantee by ITT. Ramsden specifically says that it is even more difficult to gauge what effect divestiture might have on the ability of the subsidiaries to finance offshore operations. He says only that there could be some indirect negative effect upon ITT's balance-of-payments consideration.

That is a very modest description of the consequences.

Senator COOK. Would the Senator yield?

Senator HART. Surely.

Senator COOK. I would like to add to it not just the conclusion but the remark on the second to the last page which says a final factor should be considered.

Several million dollars of ITT stock is held by foreigners. The increase or decrease in such holdings, while representing short-term investment swing, nevertheless affects the balance of payments. If ITT is a less attractive investment without Hartford, there could be a balance-of-payments impact from liquidation of foreign holdings.

I merely add that to the remarks that the Senator made in regard to the last page.

Senator HART. Fair enough.

And on the consequences on the security market generally, the ripple, there is no reference in the Ramsden report on that at all, nor was there, indeed, I am told, in the ITT presentation.

I appreciate, I think, rather clearly, the dilemma that is presented to the Antitrust Division when it gets a case of this magnitude, and the disagreement as to the proper course, which is not surprising, and second guessing is easy.

The tragedy here is that there has been introduced, not by any member of this committee, a suggestion that in this particular decision influences inimical to the public interests were at work, and together we are going to try to find out whether that was true. We have the judge's and Mr. Kleindienst's explicit statements that so far as they were concerned they were aware of nothing. That is not going to ease the concern of the public until we do, indeed, hear from others who, it has been suggested, not by any member of this committee, sought improperly to seek a change in it. That is what we are about.

I yield the balance of my time, Mr. Chairman.

Senator KENNEDY. Mr. Kleindienst, did you think it was strange to be getting two simultaneous high-level last-minute approaches from ITT?

Mr. KLEINDIENST. You mean by the call by Mr. Rohatyn and then the letter from Judge Walsh? I did not associate the two.

Senator KENNEDY. Well, you got a telephone call, as well, from Mr. Walsh, and you got a memorandum from Mr. Walsh, and a letter, and you called him back, Mr. Rohatyn had talked to you, and set up an appointment. This was all during the final hours that were available for an appeal.

Did you feel that there was anything really unusual about this?

Mr. KLEINDIENST. No.

Senator KENNEDY. That did not concern you?

Mr. KLEINDIENST. No.

Senator KENNEDY. But how about you, Judge McLaren? Did this kind of activity by one that was involved in this type of litigation, the final-hour type of effort by ITT, did that—did you think that was strange, at all, in terms of your experience in handling various antitrust cases?

Mr. McLAREN. Not particularly. They had been making approaches to me more or less continuously about some way of settling the cases.

Senator KENNEDY. And you had rejected them all; had you not?

Mr. McLAREN. I have rejected all of the different theories on which they had argued before, but they had not previously argued the hardship proposition. And I simply felt that if we could find another way of curing the matter, without taking this chance of possible devastating effect on the ITT stockholders, then ITT's continuing competitive ability, that we ought to explore that.

So, that is what we did.

Senator KENNEDY. Now, as I understand from your responses earlier, Judge, you thought that having the occasion to solicit the views of these other departments would be sufficiently important, as I think you mentioned, to grant an extension of time. You did not object if an extension of time was granted to solicit the views of the other departments?

Mr. McLAREN. Yes, that is correct. As I said in my earlier answer, I assumed you were speaking broadly of the case, and I did not realize you were speaking specifically of the *Grinnell* extension of time. I think my feeling on the extension of time under the circumstances was that it was not too important.

Senator KENNEDY. As the Solicitor General indicated, there would have to be a pretty good reason. Now what I am interested in is the Solicitor General having given those reasons, and given your feeling that there was at least some basis for considering that point in Mr. Walsh's letter, did you try to solicit the views of those departments at any time?

Mr. McLAREN. No, I did not. We had, as I said before, input from those departments on a kind of a task force thing, but I understood Judge Walsh's letter to indicate that he knew something that I did not.

Senator KENNEDY. That he knew something that you did not?

Mr. McLAREN. About these other agencies—that we were going to get representation from them.

Senator KENNEDY. You thought they would get in touch with you?

Mr. McLAREN. I did not believe it, but I thought that he thought they were going to.

Senator KENNEDY. You did not believe it, so you were really basing your representations on what you thought Mr. Walsh believed was going to be the case, that these various agencies of the Government were going to submit views to the Antitrust Division on the broad policy issues that were suggested by this case?

Mr. McLAREN. Well, this 30 days would give them an opportunity to do it if they had that disposition. I certainly was not going to solicit them.

Senator KENNEDY. And as I understand further, even though you used this as the reason, or the Solicitor General used it as the reason for the extension of time, you did not feel that there was any positive responsibility by the department to solicit those views?

Mr. McLAREN. That is right. I do not remember the precise wording, but it seems to me the Solicitor General had indicated that this would give us time to consider such views. I did not say we were going out to get them.

Senator KENNEDY. Now, Mr. Kleindienst, were you aware that Mr. McLaren was going to rely heavily on outside consultants to reach his opinion on the Rohatyn assertions?

Mr. KLEINDIENST. I think my testimony was, and my recollection now is that after the presentation was made by the ITT people in

Judge McLaren's office on April 29, he indicated that he was, you would not say startled. I do not think that is the correct word, but he was quite impressed with the presentation, that he wanted to give serious consideration to it, and that he indicated to me that he would like to have an independent comment on the material submitted by ITT.

Senator KENNEDY. And was it of interest to you who that consultant was?

Mr. KLEINDIENST. No interest whatsoever. I never heard of Mr. Ramsden before, do not know him, never talked to him, do not know what he does, or anything about him. This matter was handled by Mr. McLaren, and I had plenty of other work to do, Senator Kennedy.

Senator KENNEDY. You did not do any checking on your own?

Mr. KLEINDIENST. I did not check up; no.

Senator KENNEDY. Or determine the reliability or objectivity of the consultant?

Mr. KLEINDIENST. No, sir. Mr. McLaren was one of the greatest antitrust lawyers in this country, and I think the best, most courageous Assistant Attorney General in the Antitrust Division that this country has ever had, and I was just very happy to let him take care of it, and I would be happy to let him do it again.

Senator KENNEDY. And it did not surprise you to find out Mr. McLaren was, in effect, delegating at least an important element of the decisionmaking—

Mr. KLEINDIENST. I did not understand that in his testimony today, that he was delegating anything. He had several bases for his recommendation to me. I did not inquire into them, I did not interrogate him about it. I did not cross-examine him about it, and based upon what has been said here, and what has happened to this thing, I think he did the right thing.

Senator KENNEDY. Did you know that the White House was directly involved in the ITT case?

Mr. KLEINDIENST. No. I know that Flanigan was asked to get Ramsden.

Senator KENNEDY. You did know that?

Mr. KLEINDIENST. Yes.

Senator KENNEDY. When did you know that?

Mr. KLEINDIENST. Flanigan, I believe, delivered the Ramsden report to McLaren, and I knew that Mr. McLaren had gone through Flanigan to get it.

Senator KENNEDY. How did you know that?

Mr. KLEINDIENST. I do not know how I knew it. I do not know how I knew it.

Senator KENNEDY. But, could that have been—

Mr. KLEINDIENST. I am not in a prophylactic sack with respect to the White House, Senator Kennedy. I have worked as an extension of the President of the United States, I am a presidential appointee, I am the Deputy Attorney General, I am the Acting Attorney General, and I consider myself a part of the Nixon administration, in the executive branch of the Government of the United States.

And, as I have said here many times, I am talking to somebody at the White House constantly, and I even attend meetings at the White House, Senator Kennedy, Cabinet meetings, conferences, all kinds of things.

Senator KENNEDY. On antitrust cases?

Mr. KLEINDIENST. No. No. No, except that in this case, Senator Kennedy, you have to realize that I was the Attorney General of the United States insofar as the ITT cases were concerned. I was not just the disinterested observer, and I had a duty under the law to discharge, which I tried to do to the best of my ability.

Senator KENNEDY. So, it did not surprise you to find out that the White House staff, and particularly the White House staff member who is most widely known and written about as sort of the contact of the large corporate interests in the White House, was being utilized by the Antitrust Division for whatever purpose, or for sensitive antitrust cases?

Mr. KLEINDIENST. Well, Mr. Flanigan did not come from Winslow, Ariz. as I did. He came from New York City, and he was with the Dillon, Read Co., and I guess he has a reputation of having some expertise in the financial world.

And Judge McLaren had indicated here that Ramsden was obtained in the Ling-Temco-Vought thing on a similar basis through Peter Flanigan.

I guess that is one of the reasons why Mr. Flanigan is up there, so that there is somebody in the executive branch of the Government representing all aspects of American society, you know.

I think the President of the United States is there as a representative of all of the people, and just not isolated segments of our society.

Senator KENNEDY. Well, does it concern you to have a direct White House involvement on as sensitive a case as this in antitrust, and as landmark a——

Mr. KLEINDIENST. Well, on the basis described here, as a conduit, I would say it not only does not concern me, I guess I am glad he was up there to act as a conduit, Senator Kennedy.

Senator KENNEDY. And this White House intervention does not violate any instructions by you or the Attorney General——

Mr. KLEINDIENST. Senator Kennedy, I object to——

Senator KENNEDY. It does not bother you?

Mr. KLEINDIENST. Senator Kennedy, I would like to withdraw the work "object". I do disagree with you in your characterization of the fact that there was White House intervention in this matter.

So far as it related to the discharge of my responsibility in this case, and that of Judge McLaren, there was no intervention by anybody, and I think that the record has been made, that has been made before this committee, under oath, is abundantly clear on that point.

Senator KENNEDY. Well, now, do you think if Mr. Larry O'Brien had asked Mr. Flanigan whether he had any involvement in the case, Mr. Flanigan would have been justified to say that he was not involved?

Mr. KLEINDIENST. I do not know. That is a speculation that I just do not care to indulge in here.

Senator COOK. We could get Mr. O'Brien up here and ask him.

Senator KENNEDY. Fine, with Mr. Flanigan. I think that would be fine.

The CHAIRMAN. We will recess now until 2 o'clock.

(Thereupon, at 12:30 p.m. the hearing was recessed, to reconvene at 2 p.m. this same day.)

AFTERNOON SESSION

Senator KENNEDY. Mr. Kleindienst, we were talking just before the break about your general understanding of the role that Mr. Flanigan was playing in this case and how you viewed it, and I think we had an exchange of questioning and responses on this issue just prior to the luncheon break.

Now, I was wondering if you had ever seen the memoranda to the White House staff members warning them against any interference in regulatory cases. Are you aware of a memorandum or any memoranda ever put out to the members of the White House staff?

**TESTIMONY OF RICHARD G. KLEINDIENST, ACCOMPANIED BY
RICHARD W. McLAREN, FELIX G. ROHATYN, AND KEITH I.
CLEARWATERS—Resumed**

Mr. KLEINDIENST. I have never seen the memorandum.

Senator KENNEDY. Do you think such a memorandum would be a good idea in terms of cautioning members of the White House staff in any administration about interfering in any regulatory decisions by any of the regulatory agencies?

Mr. KLEINDIENST. Gee, I have never thought about the subject matter, Senator Kennedy.

Senator KENNEDY. Well, it is my understanding that such a memorandum was put out to the members of the White House staff very early in the administration, and it talked about how important it was for the members of the White House staff not to become involved in regulatory agencies or give the appearance of involvement. It cautioned that the members of the White House staff are very closely watched for any evidence of impropriety or interference in procedure or influence on any of the decisions. And this memorandum, as I understood it, was actually written by Peter Flanigan. He is the—

Mr. KLEINDIENST. I did not know that.

Senator KENNEDY. He is the author of it. Is there any way that you could give us a copy or secure a copy of the memorandum for us?

We have—there are excerpts in the National Journal—but excerpts. Could I just—I guess I am the chairman—could we instruct the staff to get a copy?

Mr. KLEINDIENST. Mr. Chairman, I do not have a copy of it, but apparently it is available.

Senator KENNEDY. Does it surprise you that such a memorandum was drawn up?

Mr. KLEINDIENST. Well, the Department of Justice is not a regulatory agency, No. 1; and we find ourselves involved from time to time in broad policy matters, because the Attorney General is a member of the President's Cabinet.

So, whereas members of regulatory agencies are not, I doubt if that memorandum would have application to, you know, a Cabinet department just like Justice, Commerce, or HEW.

Senator KENNEDY. Well, do you think it is proper for the White House staff to be making contacts, just independent of this, with the Antitrust Division of the Justice Department on their own? I mean, would that—

Mr. KLEINDIENST. It all depends on what they do.

Senator KENNEDY. Well, what—well, let's take this case. Do you think it was improper for Mr. Flanigan to be involved in it?

Mr. KLEINDIENST. No, not on the basis that Judge McLaren has outlined.

Senator KENNEDY. Well, does it not really depend on what Mr. Flanigan did or did not do?

Mr. KLEINDIENST. Well, I would certainly say so.

Senator KENNEDY. And are you aware what Mr. Flanigan did in the case?

Mr. KLEINDIENST. I am aware, based upon Judge McLaren's testimony.

Senator KENNEDY. Well, this is part of the problem, in finding out exactly what Mr. McLaren knew about what Mr. Flanigan did. But the basis of your answer is on what Mr. McLaren said?

Mr. KLEINDIENST. Well, I also know this, Senator Kennedy, as I have testified fully: In the discharge of my responsibilities as the Acting Attorney General in these cases, I was not interfered with by anybody at the White House. I was not importuned; I was not pressured; I was not directed. I did not have conferences with respect to what I should or should not do. So, I know that. And, then, I was dealing directly with Judge McLaren, as I have indicated. So, there has been nothing, to my knowledge, based upon my experience and participation or anything that I have heard here that even just by innuendo or conjecture or implication would suggest that in this case there was any improper conduct by anybody or interference, or anything like that.

Senator KENNEDY. Well, have you, in recent days, made yourself aware of the role that Mr. Flanigan played in this case?

Mr. KLEINDIENST. By what I have heard here.

Senator KENNEDY. Just here?

Mr. KLEINDIENST. Sure.

Senator KENNEDY. Only from what you have heard here?

Mr. KLEINDIENST. I have not had time to do much else, Mr. Chairman.

Senator KENNEDY. That—Well, it is quite clear, you say that Mr. Flanigan played a role or—certainly in the development and the selection of Mr. Ramsden, and, as I understand from newspaper reports, he was involved in the instruction of Mr. Ramsden.

Now, do you not think it would be useful for us to call Mr. Flanigan and have him come here and tell us what he knows?

Mr. KLEINDIENST. No. I think you might want to talk to Mr. Ramsden, and, then, if—no, I do not think, based upon anything I have heard here, that it would suggest that you had to call Mr. Flanigan.

Senator KENNEDY. Do you not think it would be useful to find out exactly what Mr. Flanigan told Mr. Ramsden from Mr. Flanigan and Mr. Ramsden?

Mr. KLEINDIENST. No. No. You have had my testimony here, unless you discredit it, that I was not subjected to pressure.

You have Mr. McLaren's testimony in which he used Mr. Flanigan by a means by which to get this report from Mr. Ramsden, and then you have Mr. Ramsden's report, and then you have what Mr. McLaren did. So, I think that you have the facts in this situation—

Senator KENNEDY. Well, it seems to me that Mr. McLaren——

Mr. KLEINDIENST. And, insofar as it bears on the reason for my requesting this hearing; that is, to say, was there a payoff for the settlement of the ITT case, it has absolutely no relevance or material bearing whatsoever on the situation.

Senator KENNEDY. Of course, Mr. McLaren is somewhat vague as to exactly what he told Mr. Flanigan or what Mr. Flanigan told Mr. Ramsden, is he not?

Mr. KLEINDIENST. That is why you might consider the possibility of talking to Mr. Ramsden. He is not in the Government.

Senator KENNEDY. Well, could you tell us what Judge McLaren told Flanigan?

Mr. KLEINDIENST. No. Judge McLaren can tell you that.

He can tell you that, and he can also tell you what Mr. Flanigan said to him and what he said to Mr. Flanigan.

Senator KENNEDY. And what Mr. Flanigan said to somebody else?

Mr. KLEINDIENST. I do not think Mr. Ramsden could testify about that, and neither could I.

Senator KENNEDY. Well, that is why we—at least I—would think it would be useful to have Mr. Flanigan.

You mentioned that during this period of time that you did have some contacts with Mr. Flanigan, did you, about this case?

You were aware that Mr. Flanigan had asked Ramsden to conduct this study?

Mr. KLEINDIENST. Yes. I think that I learned that from Mr. McLaren, and I also was aware of it when the report was delivered to Mr. McLaren. I had no conversation with Mr. Flanigan, though.

Senator KENNEDY. Do you know if any briefs or papers prepared by the Antitrust Division in connection with the case were ever reviewed by the White House?

Mr. KLEINDIENST. No, I do not.

Senator KENNEDY. Mr. McLaren, do you know?

Mr. McLAREN. The question is whether the White House ever reviewed the antitrust papers?

Senator KENNEDY. Whether any briefs or papers prepared by the Antitrust Division in connection with this case were ever—or I suppose any other case—were ever reviewed by the White House, particularly in Mr. Flanigan's office.

Mr. McLAREN. Let me answer the first, as to this case.

So far as I know, there was nothing sent to the White House for its review.

In any other case, as I mentioned earlier, I had some contact with Mr. Flanigan in connection with getting a financial expert to assist us and prepare a report in the LTV case.

Other than that, I do not recall any case discussions over there.

Senator KENNEDY. And you do not, Mr. Kleindienst, as I understand?

Mr. KLEINDIENST. Same answer.

Senator KENNEDY. Same answer?

Could I ask you, Mr. Kleindienst, if the committee requested Mr. Flanigan to come here, do you think that executive privilege would exclude him from responding to the request of the committee?

Mr. KLEINDIENST. I would not want to express an opinion on that.

Senator KENNEDY. Well, we are going to get an opinion, are we not, at some time?

I mean, do you see any reason why executive privilege would apply to the function that Mr. Flanigan performed in the selection of Mr. Ramsden?

Certainly, there does not appear to be any direct contact or participation, or is there, with the President?

Mr. KLEINDIENST. Well, I can see where there would be the possibility of a reason for executive privilege to always apply when you seek to get a confidential adviser of the President of the United States you know, to come down to the Congress and testify.

Just generally speaking, I think that question is always possible.

Senator KENNEDY. Even if it is restricted to the particular incident which he is not performing, supposedly, at the will of the President?

Mr. KLEINDIENST. I think it would apply to almost any situation, Senator, to be invoked by the President of the United States in his discretion, which I think has been customary in the past.

Senator KENNEDY. For what reason? For good cause?

Mr. KLEINDIENST. For what reason? Because of what I gather to be the separation of powers under the Constitution of the United States, the preserving of the integrity of the Office of the President of the United States.

Senator KENNEDY. Well, is it your opinion that every presidential assistant is immune from every kind of congressional request?

Mr. KLEINDIENST. Gee, I do not have an opinion on that. Senator Kennedy.

Senator KENNEDY. I mean, if Mr. Comegys, for example, had selected Mr. Ramsden, would he not be here and talking about that factor if we requested him?

And now we have got Flanigan, supposedly just performing a routine kind of function which was following a pattern that was used before in the LTV case, and why would it not be appropriate to—

Mr. KLEINDIENST. Part of it may be explained by virtue of the fact, Senator Kennedy, of what we have been doing here in the last several days. I requested these hearings to look into a specific charge that not only cast doubt upon the integrity of the Department of Justice and its employees but, in a more real sense, upon my own personal integrity. And the scope of the hearings have gone far beyond that. And I doubt—and maybe this might be further reason for the privilege—that the Presidents in the past have discovered that if they sent out a confidential aide to testify about a very limited subject matter he might be there for a month, you know, talking about the manner in which the President of the United States arrived at executive decisions. That might be part of the reason. And I think there would be a little bit of concern and apprehension that there would be any limitation imposed upon Mr. Flanigan, his duties and what he did, and what he said to the President and what the President said to him, and I suppose that, because of that kind of thing, the Presidents for a long, long time have from time to time rather sparingly invoked executive privilege.

What the President will do in this case, I do not know.

Senator KENNEDY. Of course, it may very well turn out during the course of these hearings that there is absolutely no kind of implication in terms of this charge as it is related to you.

Mr. KLEINDIENST. It may well turn out?

I can tell you with absolute certainty, Senator Kennedy, that it will not turn out that there was any implication.

Senator KENNEDY. And that——

Mr. KLEINDIENST. That is not a conjecture or a hypothetical, Senator Kennedy.

Senator KENNEDY. But it certainly would appear that all of the kinds of questions that have been raised, as it surrounds the case, should and could be resolved.

Mr. KLEINDIENST. No, I do not think so, Senator Kennedy. I have testified that—you know, in terms of the broad charge—there was not a fix here. Nobody was bribed; there was not a payoff. I testified that I was not pressured, nor importuned, nor did I have dealings with Mr. Flanigan, and if he bribed me or set up a bribe, I doubt if he would come down here under oath and tell you, “Yeah, I set up a big fix with Kleindienst by which we were going to get bought for 100,000 bucks to settle a 1-billion-dollar antitrust case.” That is why I say I do not think it would lend itself to this kind of inquiry. If Mr. Flanigan were going to do that, I doubt if he would come down here and admit it to you, Senator Kennedy, and there is no evidence offered by anybody that there has been. There has been quite a bit of attention paid to this case in the last several weeks and anybody who has had a chance to has talked to the press and there has been no intimation from anybody for any reason of any kind that the Department of Justice was motivated in the ITT settlement, because ITT was giving the money to the city of San Diego to put on a convention. That fact—there is nothing about that fact except a memorandum written by a poor soul who is a rather sick person, and that is all, you know; it is just a sad situation.

Senator KENNEDY. Could we move to the—I do not know how you want to do the time, Mr. Chairman. I am prepared to continue, or I would like to let Senator Tunney or Senator Hart——

The CHAIRMAN. Senator Mathias?

Senator MATHIAS. No, thank you.

The CHAIRMAN. Go ahead.

Senator TUNNEY. I yield to Senator Hart.

The CHAIRMAN. Oh, excuse me.

Senator HART. This morning I expressed my reaction to the Ramsden report, and I did think that one of you might react with your own thoughts about it.

Now, let me ask you two questions to try and clear up the record on the ITT presentation and your own independent analysis of the so-called national policy factors that made, in your judgment, this a prudent decree to settle it.

All of us know that there would be a prospective loss in fair value to the ITT stockholders; and, second, there is the suggestion of a serious impact on the market generally from such a substantial individual loss; and, third, there was this thing we call the balance of payments, dramatized, perhaps, by Mr. Kleindienst's reference at the opening of the hearings to the inability of ITT foreign operations to perform several billion dollars worth of contracts.

Now, I think it is fair to say that the general impression from the first few days of testimony was that the *ITT* case, as to these overriding national policy concerns, was substantiated in the written presentation that was left with the Department and which Mr. Ramsden was asked for as an outside evaluation of, well, we will call it the ITT presentation or case. I gather there was an oral presentation

made at the meeting with ITT and the Department as well as the ITT written presentation. But Mr. Ramsden and the Treasury man, Mr. MacLaury, were not present for that oral discussion.

Mr. McLAREN. Excuse me, Senator. Mr. MacLaury was present. Senator HART. He was?

Mr. McLAREN. Yes.

Senator HART. I mentioned this morning that the first of the two factors, the first of the two national policy factors—not just the adverse effect on the ITT stockholders themselves—namely, the general impact on the market, the ripple effect, is discussed in neither the ITT written presentation nor in Mr. Ramsden's report.

Should I understand then that this was a matter discussed orally at the meeting—I take it this was discussed at the meeting—not in terms of a file brief but in verbal explanation?

Mr. McLAREN. Yes, sir, that is correct. As I recall, Mr. Rohatyn carried the initial burden of making their presentation as to the impact on ITT, and he did it from the standpoint not only of the company of which he was a director but also, as I recall, from his standpoint as a professional investment banker and the overall possibilities of the thing.

Then, the second part, and I think I am correct on this: Dr. Saulnier made a presentation which spoke more broadly of the impact upon the economy, talking about the dividends that ITT received from abroad, the ability that it had to finance its foreign operations by reason of its very strong financial position. In other words, if you put out debentures, it is not the underlying mortgage property, or something like that; it is the overall credit of the company, and that this overall credit was terribly important to them in getting credit abroad.

Now, I think he also spoke to the question of the balance of payments. And the Ramsden report, and I speak subject to correction on it, I believe did cover mainly the effect on ITT stockholders. But it also touched upon—and I think the figure that we cite that would be lost by the stockholders was \$1,200,000,000 according to his estimate—I think he also referred to the question of the balance of payments, and I think maybe the ripple effects, catchword, so to speak, which was one that was in my original testimony, and it was one that concerned me, and I must say that I do not know exactly from which one of these analyses or anything else I may have studied I got it, but it was my own feeling that there was that danger.

Does that answer the question?

Senator HART. It does. But let me pursue it in the interest of a clear record.

Following that discussion where the several areas of concern were described, was there any analysis made of the likely impact on the market of a drop in ITT of \$10 a share? Specifically, was an actual analysis with curves and all of the business they always come up with presented and, if so, did it come out of ITT or Justice or Commerce or Mr. Ramsden?

Mr. McLAREN. I do not think there was anything further in writing, Senator. I think you have these two things, one of which is fairly lengthy, the ITT document, and the other shorter Ramsden document. And then there is Mr. Rohatyn's additional letter to me dated May 30th of which I think you also have a copy.

Senator HART. And is a part of the record.

Was it a fear that the market would slump or that investment houses in New York might encounter further difficulties—and I know that would have been a legitimate concern of Mr. Rohatyn at the time in view of his role of, what was it called?

Mr. ROHATYN. I was chairman of the Stock Exchange Surveillance Committee, Senator.

Senator HART. Yes. To what extent might that have been a factor in the overall evaluation?

Mr. McLAREN. Well, I was pretty close to that situation, too, in that we had going in the Antitrust Division at the time a number of things with the SEC. We filed two or three times during 1970 and 1971, as I recall, on the question of fixed commission rates, on the question of institutional membership, and so on, and I was very conscious of our obligation to try and get the American public a good competitive market, and, on the other hand, I knew that there had been a number of brokerage firms go broke, and, particularly, on the fixed commission rate, there was the view that if we pushed too hard on that maybe it would cause further panic. So, I had that in my mind pretty directly. We did continue to push that position, I might add.

Senator HART. Did you raise this aspect with any of the Department's own financial experts who were handling the exchange matter? Did they have any input in the evaluation of the prospects of the severe adverse across-the-board market damage?

Mr. McLAREN. No, sir; I do not think so. That would be our policy-planning group, but I do not think any of them were in a need-to-know position. We were trying to be very careful about this, as I testified earlier.

Senator HART. And then as to the second of these overriding national policy concerns, the balance of payments, Mr. Ramsden's report does deal with those. I am advised the ITT written material deals with it. Perhaps the key question is not the extent of ITT foreign activities and the balance of payments considerations at that time. The key question, I think, would be the impact the divestiture would have; how great, how harmful, would the impact of the divestiture of their operations be, and Ramsden says, as I read his report, yes, the balance sheet picture and financial condition of the American parent would have some impact. But it is, and I think this is a fair paraphrase of him, it is far more indirect and less substantial and more difficult to predict what impact there will be.

That is the point I was making this morning, that it is hardly a ringing endorsement for the argument that divestiture would seriously cripple ITT's overseas balance of payments generation. Would you react to that?

Mr. McLAREN. Well, I felt that Mr. MacLaury was probably more knowledgeable in that area than Mr. Ramsden was, and I felt that MacLaury had fairly well confirmed that he agreed, or at least did not disagree, with the ITT presentation, and that of Dr. Saulnier, and so on. I would not say that that was an important part of the Ramsden report.

Senator HART. Finally, is it fair to conclude, then, that there was no specific analysis provided the Department to document or substantiate the suggestion that ITT would be unable to perform contracts or obtain adequate financing to continue its overseas programs if there was divestiture?

I am not suggesting that there might not be this consequence, but I am asking: Was there an analysis developed specifically on that question?

Mr. McLAREN. No, I would not say we had any such analysis by way of proof in that manner, nor any real quantification of how extensively it would be true.

I think we all felt it would be true to some degree.

Senator HART. And last—and this is indeed the last—and it is a passage in the testimony of earlier days that brought me back to it this morning and is why I want to get the record clear this afternoon: on page 161 [of the typewritten record] of the record of the first day, last Thursday, in a series of exchanges with Senator Fong, it appears that mention was made of the outside analysis. Mr. MacLaury is identified, and then on page 161 [of the typewritten record] Judge McLaren says:

Secondly, we had this outside expert, financial analyst, and we asked him to analyze the ITT material and take into account any other factors that in his experience and based on his financial expertise, to give us his impartial opinion. Yes, I asked for those two things.

Senator FONG. So the experts gave you an analysis of the situation as they saw it?

Judge McLAREN. That is correct.

Senator FONG. But they made no proposals to you?

Judge McLAREN. No, sir, they simply confirmed that in their view, if they were successful and forced the divestiture of Hartford, that it would cost the stockholders of ITT something over a billion in stock values and that it would seriously impair, as I recall, the ITT, particularly their overseas operations and ability to finance their overseas operations.

Mr. McLAREN. Yes, sir.

Senator HART. Now, from the discussion we have just had, would you agree that the basis for the judgment on the overseas operations, the balance of payments, came not from the outside analysis and the comment of the outside analyst on the balance-of-payments thing?

Mr. McLAREN. That is right.

Senator HART. It was rather tentative?

Mr. McLAREN. Yes, sir.

Senator HART. I repeat what I said this morning, too, Judge, that determining after the event the wise and the proper and the prudent course to take in an item as complex as a major antitrust suit is one of the easiest things in the world to second-guess, and I would not be involved in it at all if it was not for the introduction of the suggestions that there was an impropriety attached to this settlement. This is my only reason for it. It is the only reason any of us are here.

I was once a prosecutor, and even to explain why you decline prosecution on a misdemeanor sometimes sounds very thin, and there is very little comparison between a misdemeanor and one of the largest antitrust settlements in the history of the United States, and I hope you do not misunderstand my reason for the inquiry.

Mr. McLAREN. Thank you very much, Senator. I appreciate it.

Senator HART. Thank you, Mr. Chairman.

Senator HRUSKA. Mr. Kleindienst, we would refer, I suppose, to Mr. Ramsden as an outside authority as opposed to in-house economists or financial people within the department. Can you envision a day and a half or 2 days of hearings and commentaries and questioning ensuing had the department determined to stay within the department for advice on this very momentous decision and farflung decision involving worldwide implications and huge sums of money?

Suppose that you, instead of having gone outside of the department, had stayed in the department; do you think it likely that the charge would have been made as to why you confined yourself to opinions generally within your department where you have a close control over them and it could be charged that they will say what you want them to say. Do you think it is conceivable that that charge would have been made and prolonged by many, many questions, some of them consequential, many of them inconsequential?

Mr. KLEINDIENST. Well, based upon what has occurred here, Senator, that looms up in my mind as a distinct possibility.

Senator HRUSKA. You have often been known as an authority in the art of understatement, and I think you proved it by that last suggestion.

Mr. KLEINDIENST. I think my reputation is something to the contrary.

Senator HRUSKA. After all, if there is anything irregular in designating one authority as over another and if there is a conflict of interest by Mr. Ramsden or somebody else, this Senator certainly cannot see what bearing that has on the qualifications of Mr. Richard Kleindienst, to be Attorney General.

Now, if there is fault and if there is impairment in the procedures used by the Antitrust Division that is something for the committee to take under investigation and under advisement and proceed accordingly at an appropriate time.

Now, apropos of the suggestion this morning about the propriety of referring this matter to other departments as suggested by Judge Walsh, Judge McLaren, in 1962, under Attorney General Robert Kennedy, there was created the Foreign Commerce Section of the Antitrust Division in order to coordinate the activities of the Department of Justice as to antitrust matters in the international sphere. Is that section still operating?

Mr. McLAREN. Yes, sir.

Senator HRUSKA. Is Mr. Fugate still its chief?

Mr. McLAREN. He is, indeed.

Senator HRUSKA. And a great authority in his field?

Mr. McLAREN. Yes, sir.

Senator HRUSKA. As we sometimes say on the floor of the Senate, I hold in my hand the written and printed testimony of the Antitrust and Monopoly Committee hearings in April, June, and August 1966, entitled "International Aspects of Antitrust." Over 25 notable authorities in the field of antitrust and economics and finances were heard during this series of hearings, including Mr. Edwin Zimmerman, one of your predecessors as Assistant Attorney General of the Antitrust Division. I call attention to these hearings and particularly to page 493 and ensuing pages so as to lay to rest this business of suggesting or contending that to refer such matters to other departments of the Government is alien, novel, something new and useless and out of order.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Mr. McLaren, in your prepared statement, you indicated that "Neither during this period nor at any time while the cases were pending, nor during the settlement phase, did I discuss these cases with Mr. Mitchell. I occasionally discussed the cases with Mr. Kleindienst. . . ."

That, as you may remember, is a part of your prepared statement and appears at page 16 [of the typewritten copy] of the record.

Mr. McLAREN. Yes. I think I used the term "discuss" there in the sense of "consult with."

Perhaps, the Senator has in mind one of the memorandums we turn in which indicates that I sent the *Canteen* case up to the Attorney General when I initially recommended suit.

I have reviewed the situation there. Mr. Mitchell had listed Continental Bakery as a former client of his former firm and only indicated that it had later been acquired by ITT. I think what happened was that I sent the proposed case up, and then he telephoned me about it and said he was disqualified, and then he sent it down to Mr. Kleindienst. I think that was the extent of any talks I had with him.

Senator KENNEDY. And Senator Hart, in discussion, questions, with Mr. Kleindienst, said:

"What discussions did you have with John Mitchell with respect to any aspects of the ITT cases?"

Mr. Kleindienst said "None," and Senator Hart said: "Mr. McLaren, Judge McLaren?"

And Judge McLaren said:

"I had none, sir."

Mr. McLAREN. I think that would be correct. There is a "buck" slip showing that the Attorney General's executive assistant simply bucked the matter down to Mr. Kleindienst.

Senator KENNEDY. Mr. Chairman, in the Department documents made a part of the record of this hearing there is, as Mr. McLaren just mentioned, the memorandum from Mr. McLaren, dated April 7, 1969, addressed to Mr. Mitchell which states as follows:

The attorneys for ITT are coming in to talk about the Canteen acquisition tomorrow morning. I expect to tell them we are recommending suit, including a prompt motion for temporary restraining order, unless the merger is abandoned.

And the second document is a memorandum dated April 7, 1969, from the executive assistant to the Attorney General, addressed to Mr. Kleindienst, which reads as follows:

This is a proposed civil antitrust complaint to prevent ITT from acquiring Canteen Corporation, a nationwide food service and vending company.

This looks like a good case under section 7 of the Clayton Act. There is a vertical aspect in that Canteen will be in a position to muscle its competitors and potential competitors out of food service and vending at the installations of ITT and its affiliated companies.

Canteen and ITT will also have the power to expand the former's business by anticompetitive reciprocity action directed at suppliers of ITT and its subsidiaries. Moreover as alleged in the complaint, the merger will tend to cause similar mergers by Canteen's competitors simply seeking protection against the effects of this one or aggressively seeking similar competitive benefits.

Dick McLaren has talked to the Attorney General—

and it says "A.G."

about this case so that he is aware of it. I don't believe he is aware that it is now "ripe." You may want to talk to him about it on the phone.

And then it continues:

As far as your signing the complaint is concerned, I dare say you can scratch out the A.G.'s typed name and then sign yours as Acting Attorney General.

And, then, at the bottom of the memorandum there is a handwritten notation: "To McLaren. O.K."

The document which the committee has received from the Justice Department was a copy and there are certain parts of it which are hard to decipher, on the top right, Mr. Chairman. I think the committee ought to receive the original.

Mr. McLAREN. I think that is just a smudge, Senator Kennedy.

May I just add that the first document you read from, which is headed "To Mr. Mitchell", that the attorneys for ITT are coming in to talk about this acquisition tomorrow, and so on——

Senator KENNEDY. Yes?

Mr. McLAREN. I believe that that was the covering memorandum for a "buck" slip, in effect, for my so-called "A.G. Memo" which contained an analysis of the case and my recommendation to sue. And also attached was the ITT proposed complaint. And this, I think, would have been bucked on, under the Lindenbaum memorandum and the rest of the material, on down to Mr. Kleindienst.

Senator KENNEDY. Do you know, Mr. McLaren, whose handwriting that is at the bottom?

Mr. McLAREN. The bottom "To McLaren. O.K."?

Senator KENNEDY. Yes.

Mr. McLAREN. I think that is probably Mr. Kleindienst's.

SENATOR KENNEDY. What is the time of that, do you know?

Mr. McLAREN. I could not hear you.

Senator KENNEDY. Could you tell us when you got it? It says "April 7" at the top. And when did you get it?

Do you know when he got it back; do you know the date you received it back?

It is stamped.

Mr. McLAREN. I would imagine I received it back very promptly. I do not have the rest of the memos, and so on, in mind, but I think you will find additional papers that they write that about this time the company had agreed to put off the closing date on the merger in order—and asked me to set up a meeting with them for them—with Kleindienst so they could appeal my decision to sue. That was first set up, as I recall from these papers, for about the 14th of the month and was subsequently postponed and, I think, was held around the 20th or thereafter.

Senator KENNEDY. Could you tell us why you would mention this to the Attorney General if he had removed himself from the case?

Mr. McLAREN. I think he had probably not removed himself from the case at that point. In other words, my "A.G. Memo" is directed to the Attorney General. It went up there with this covering "buck" slip, and then—Well, the executive assistant bucked it on down to Kleindienst.

Senator MATHIAS. Would the Senator identify the date of the memo that he has?

Senator KENNEDY. It is dated April 7, 1969.

And I believe—do you remember when the Attorney General indicated he was removing himself from all of the cases?

As I understand, he sent around a client list in January or February 1969—the Attorney General—and I am reading from page 172 [of the typewritten copy] of the transcript;

[T]he Attorney General sent around a list of former clients of his or his firm's and stated that he would disqualify himself from handling such matters.

And it is my information that that was done either in January or February, 1969.

Mr. McLAREN. No, it was early in March, Senator, and it had on it "Continental Baking Co. (since acquired by ITT)," and I did not take that to mean that he had disqualified himself on ITT generally, if I thought about it at all, that is, and, so, I sent the materials on up to him, including these various memos that you see before you. And apparently he, from these date stamps, received it on the seventh, or his office did, and Mr. Lindenbaum bucked it on down to Mr. Kleindienst also on the seventh, the same day.

Senator KENNEDY. Would you have talked to the Attorney General prior to the time, then, that he took himself out or—

Mr. McLAREN. No; I think that he—as I reconstruct, and I do not have any clear recollection, I think he called me on it when the papers came up and he said "My connection was such that I think I will disqualify myself inasmuch as Continental is now an ITT division."

Senator KENNEDY. So your recollection is that that was the basis of the communication, that it was that he was taking himself out of that case?

Mr. McLAREN. Yes. I think that he just called me and said that he was disqualifying himself and was asking Lindenbaum to send it on down to Kleindienst.

Senator KENNEDY. It has, of course, in the next to the last paragraph:

Dick McLaren has talked to the A.G. about this case so that he is aware of it. I don't believe he is aware that it is now "ripe." You may want to talk to him about it on the phone.

Why would they put in that line?

Mr. McLAREN. I am not—I am not clear as to just what this means, Senator. It would sort of indicate that the papers did not go to the Attorney General at all but that Mr. Lindenbaum took it upon himself on the seventh to send them on down. I cannot enlighten you any further on that. I am sorry.

Senator KENNEDY. Do you, Mr. Kleindienst, remember anything about that?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. You do not remember whether you ever did talk to the Attorney General about it?

Mr. KLEINDIENST. Well, I know, Senator Kennedy, that in any case that Mr. Mitchell disqualified himself I did not talk to him about it thereafter. That would be the purpose of the disqualification.

Senator KENNEDY. I yield to Senator Tunney.

I yield, Mr. Chairman, I do not know what the time—I think I have—

The CHAIRMAN. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Judge McLaren, as I understand what you have just stated was that the Attorney General disqualified himself from any ITT matters because he had once represented Continental Baking which later became a subsidiary of ITT but that ITT was not on the list as his having represented ITT in anything at anytime; is that correct?

Mr. McLAREN. Yes, sir; that is my understanding.

Senator COOK. And that that list was circulated in the end of March and that this matter came up in April?

Mr. McLAREN. Sometime in March; that is right, and this was early April.

Senator COOK. And, as a matter of fact, under the consent agreement that was entered into by the Justice Department, ITT was ordered to divest itself of Canteen and, therefore, is in the process of divesting itself according to the consent agreement; is that correct?

Mr. McLAREN. Yes.

Senator COOK. If it has now already done so?

Mr. McLAREN. Correct.

Senator COOK. So, therefore, having accomplished what the memorandum of April called for—and that was the divestiture of Canteen by ITT—it would have been rather fruitless to have taken the case all the way up to the Supreme Court if it had already been accomplished by a consent agreement, would it not?

Mr. McLAREN. Yes, sir.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tunney.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Kleindienst, did you ever meet with any of the attorneys from Canteen or any of the executives of Canteen?

Mr. KLEINDIENST. Not that I recall, Senator Tunney. Mr. McLaren has alluded to a meeting in the early part of 1969. I do not recall attending any meeting like that. I never met, you know, by myself, with them. Those were rather harried days for me. I could have been at that meeting, but I do not recall.

Senator TUNNEY. You do not recall?

Mr. KLEINDIENST. No, sir.

Senator TUNNEY. And if you did have such a meeting, it would not have had any influence?

Mr. KLEINDIENST. No. No. I just sat there and turned the matter over to Mr. McLaren.

Senator TUNNEY. Mr. Rohatyn, did you know of any meeting between executives of Canteen and the Justice Department with Mr. Kleindienst?

Mr. ROHATYN. No, Senator, I do not.

Senator TUNNEY. Mr. Kleindienst, I would like to ask you just one last series of questions. Believe it or not, I mean that.

Mr. KLEINDIENST. Promises, promises, promises.

Senator TUNNEY. Pursuant to your general authority under 28 U.S.C., part 2, section 31, would you as Attorney General consider implementing the following, by means of administrative order, in order to mitigate some of the problems we have seen in this case; a rule that whenever an antitrust case is settled, a reasoned opinion be made public articulating why the settlement is adequate, in the public interest, and achieves the original purpose of the complaint? This statement would go beyond the rather limited press release which is now issued when consent decrees are filed and would provide a basis for public evaluation of a proposed consent decree once it is filed for comment.

This is the question that is contained in the letter I wrote to you on March 6, 1972.

Mr. KLEINDIENST. Yes, I have your letter, and I have read your letter, Senator Tunney.

(The letter referred to follows:)

MARCH 6, 1972.

HON. RICHARD G. KLEINDIENST,
Acting Attorney General, Department of Justice, Washington, D.C.

DEAR MR. KLEINDIENST: In preparing my questions for the continuation of your testimony, I am particularly concerned that we look for mechanisms to avoid in the future the type of situation with which we seem to be confronted at the moment. That situation as I see it, presents to the general public a picture of governmental decision making which gives the appearance, whether legitimate or not, of compromises arrived at and bargains struck through special and perhaps improper influence. Such appearances do nothing to confirm the public's faith in our governmental system. By thinking now about new safeguards we may also provide the means for public officials to act in a manner above criticism.

For this reason I want to raise with you two possible areas of reform which I began discussing with you on Friday. I want you to have the opportunity to consider them before they are raised tomorrow so that we might have the benefit of more than a few moments of deliberation.

Pursuant to your general authority under 28 U.S.C. Part II, § 31, would you as Attorney General consider implementing the following, by means of administrative order, in order to mitigate some of the problems we have seen in this case?

(1) A rule that whenever an antitrust case is settled, a reasoned opinion be made public articulating why the settlement is adequate, in the public interest, and achieves the original purpose of the complaint. This statement would go beyond the rather limited press release which is now issued when consent decrees are filed and would provide a basis for public evaluation of a proposed consent decree once it is filed for comment.

Such a procedure would hardly be revolutionary. Thurmond Arnold, shortly after taking over as head of the Antitrust Division in 1938, announced that he would regularly issue public statements explaining Antitrust Division action which would include:

(1) the conditions which the Department believes to exist in the particular industry which create monopolistic control or restraint of trade; (2) the reason why the particular procedure was followed, whether a civil suit, consent decree, criminal prosecution, acceptance of pleas of *nolo contendere*, or dismissal of the proceeding; and (3) the economic results which are to be expected from its action in the particular case.

In 1968 Professor Donald Turner, then head of the Antitrust Division, implemented his Merger Guidelines, specifying which mergers would probably be blocked by Justice and which would not. Judge McLaren has substantially followed them. Their purpose, too, has been to announce publicly antitrust policy so that the public and potential defendants are apprised of what to expect.

I consider it especially vital that such public explanations accompany consent decrees like ITT. A consent decree cuts off later treble damage claimants from citing the settlement as *prima facie* evidence of liability. And more seriously, a bad consent decree can be worse than the preexisting situation since it could immunize the situation from later antitrust attack: e.g., the ATT-Western Electric settlement. A public elaboration could discourage bad decrees—because they would be harder to defend and would invite public criticism—and it could spare enforcers embarrassing political pressures by objectifying reasons which could be utilized in future proceedings.

(2) A requirement that any *ex parte* meeting or phone conversation between defendants in pending antitrust cases and the (a) Assistant Attorney General Antitrust Division or his deputy, (b) Deputy Attorney General, (c) Attorney General, and (d) White House staff be reported in written form by the particular official and listed with the court in which the suit is pending, including a description of general purpose of the visit. You earlier testified that the public should trust their elected or appointed officials in such situations; perhaps they should, but in point of fact they often do not. Like Caesar's wife, government officials should endeavor to place themselves above suspicion.

This kind or proposal was put forward in another form by Professor Philip Elman while he was an FTC Commissioner. He suggested that the FTC ban *ex parte* communications by interested parties to individual commissioners during an agency proceedings where a quasi-judicial function was performed.

Last Friday, I asked you whether Congress should enact a law requiring the listing of *ex parte* contacts. In your answer, you noted that such a reporting re-

quirement would be too burdensome given the number of calls and visitors you receive each day. The rule I propose would be only for antitrust cases, of which only an average of 56 a year have been filed in the past decade. Most defendants settle quickly, without ever petitioning the Deputy Attorney General or his superiors. Moreover, antitrust cases usually involve large economic stakes, and they usually involve business defendants most able and prone to attempt massive lobbying or influence. As I recall it, upon becoming Deputy Attorney General, you instituted a procedure whereby Justice Department employees had to keep time sheets of all daily activities. It seems to me that my suggestion would be far less burdensome than your own internal reform.

Both of these proposals seek to instill public confidence in government by opening up its processes and its doors. I would hope you will help us all to learn from this experience.

Sincerely yours,

JOHN V. TUNNEY, *U.S. Senator.*

Senator TUNNEY. Could you just refer to that paragraph and would you comment on it?

Mr. KLEINDIENST. I think my comment would be this, Senator Tunney, that, No. 1, I do not think this hearing has raised problems other than the fact that the charges made are untrue. But I think that antitrust is a very essential, significant, sensitive aspect of the work of the Department of Justice, and what I am determined to do when I can go back to do it is to direct the Antitrust Division to study carefully the entire contents of your letter and to give me a memorandum with respect to their comments and recommendations so that I can, under appropriate circumstances, arrive at a decision if there are any remedial reforms that should take place.

And I construe the contents of your letter to be very thoughtful as the result of what has gone on here, and I am going to give it serious consideration.

But I have no opinions about the matter that you raise, Senator Tunney, and would not want to express them now.

Excuse me. I am getting a secret message from Judge McLaren.

The Judge tells me that we do have a 30-day waiting period, and that that was put in by Senator Robert Kennedy when he was the Attorney General.

Senator TUNNEY. Of course, the question is what the public knows about the negotiations that went on prior to the time that the settlement was filed with the court. And quite frankly, I think that the need for such confrontation, including the filing with the court of any ex parte meeting or phone conversations between the defendants and an official in the Justice Department, or in the White House, is to protect the men, the public officials who are involved in the settlement of the case on the side of the Government.

Quite frankly, I think that many questions which have been put to you and to Mr. McLaren would not have been needed to be put to you if such a procedure were followed.

In other words, it is protection to you and protection to Mr. McLaren and to your successors. That is why I made the suggestion, because I think it is quite clear that as public officials you can be subject to accusations, false accusations; and this would be a means of protecting you and future Deputy Attorneys General, Attorneys General, and chiefs of the Antitrust Division.

Wouldn't you agree with that?

Mr. KLEINDIENST. Like I say Senator Tunney, I think that your letter was very thoughtful, and it is going to be studied. And I wouldn't

want to pass a judgment on it. I think likewise the Congress might want to study it from the standpoint of possible legislation.

Senator TUNNEY. I think that we should. And your comment on it, after you have had an opportunity to research it, would be most beneficial.

I was honest in my earlier remark: I have no further questions.

I just want to clear up one thing. I certainly hope that you would not think my questions this morning, yesterday, or Friday, were the questions of a prosecutor who was trying to prove your honesty because they certainly weren't raised in that light or with that feeling on my part. But I do feel that as a Senator I do have a responsibility to get as much information on this case as possible, particularly considering the seriousness of the accusations that were made in the memorandum.

Mr. McLAREN. Thank you very much, Senator. I am sorry that my voice went up the scale a little bit in our last interchange.

Senator TUNNEY. Thank you.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. On Friday we discussed an exchange of correspondence that Mr. Reuben Robertson had with the Department last September, and there seems to be some confusion about it. So I would like to see if we could straighten it out.

I think that you said, Mr. Kleindienst, that you were not familiar with Reuben Robertson, is that correct?

Mr. KLEINDIENST. With him?

Senator KENNEDY. That is right.

Mr. KLEINDIENST. I am not to this day.

Senator KENNEDY. Your memory has then been refreshed over the weekend about Reuben Robertson?

Mr. KLEINDIENST. I don't recollect any more than I did then. I don't believe I ever saw that letter, Senator Kennedy.

Senator KENNEDY. Mr. McLaren, you said you recognized the name as a man who had been on the Consumer Aeronautical Board, or something like that?

Judge McLAREN. Yes. And I recall now that I saw something connected with the Nader investigations, at least I understand that is so.

Senator KENNEDY. Isn't it a fact that he was really quite a well-known figure to the Antitrust Division, Reuben Robertson?

Judge McLAREN. I don't think so particularly, Senator. I think there were a half a dozen of them that we had there one summer a good part of the time looking into our operations, and so on. And they subsequently made their report. But I don't recall that Mr. Robertson was one of them.

Senator KENNEDY. Hadn't he and Mr. Nader moved against the Hartford-ITT merger in a State court during the summer of 1970?

Judge McLAREN. I didn't recall that he was in that. But now that you mentioned it, I guess he was.

Senator KENNEDY. I was under the impression that he was almost in daily contact with the attorneys during the period of 1970 and 1971, and early in August he started asking your attorneys questions about the settlement negotiations, until the order came down, presumably from you or Mr. Comegys.

Judge McLAREN. I don't think that that was brought to my attention.

Senator KENNEDY. You never ordered anyone in the Department not to speak to Mr. Robertson?

Judge McLAREN. I don't think so. You understand, depending upon what period here—everybody was on a need-to-know basis, we weren't just talking to anybody about the possibility of settlement, and so on. I don't know just what period you are speaking of. If it is after the settlement was announced, I don't think there was any inhibition.

Senator KENNEDY. After the settlement was announced do you know if you ever instructed anyone, or Mr. Comegys instructed anyone, not to speak to Mr. Robertson about the settlement?

Judge McLAREN. No.

Senator KENNEDY. Is Mr. Comegys here?

Mr. KLEINDIENST. He is still in France. He is probably delighted to be there.

Senator KENNEDY. I understand that on September 17, Mr. Robertson and Mr. Nader were granted leave to appear as *amicus curiae* in the Hartford-ITT case in the Federal court in Hartford. Do you remember that, Mr. McLaren?

Judge McLAREN. Not exactly the time sequence. But as Mr. Kleindienst said, we have a 30-day period after a proposed decree is filed with the court, that is made public, and anybody has a right to file something, comments and so on. And I think that from what you are saying that Mr. Nader and Mr. Robertson must have filed with the court. And I have forgotten what their objections were. As I recall, they had more to do with projecting their lawsuit than they did, I think, criticism of the settlement we made. I had pretty much forgotten. But I do recall that they were involved up there.

Senator KENNEDY. In the case at Hartford? You were aware that Mr. Robertson petitioned to file an *amicus* brief in the Hartford case?

Judge McLAREN. Whether it was a petition for *amicus*, or whatever, you remind me that he was involved up there along with Mr. Nader. And I will accept your statement.

Senator KENNEDY. So on the question whether these become important in connection with Mr. Robertson's letter, I understand the ITT settlement was filed in court on August 24, and that would not be approved by the court until September 24, at the earliest, according to the 30-day period which you referred to earlier. And so isn't it true, then, that when Mr. Robertson wrote his letter on the 21st, the case was still very much open, and the settlement could be delayed or questioned as a result of the hearing schedule in Hartford on September 23, which Mr. Robertson was scheduled to appear at?

Judge McLAREN. I think that is pretty speculative. I didn't make any connection on it. We had quite a few communications from the so-called Nader Raiders. They have been very critical from time to time of things we have done on a very subjective basis, it seemed to me they were always finding some deep dire plot, and I am afraid I didn't pay much attention to them.

Senator KENNEDY. As I remember, the letters which he sent on the 21st were answered on the 22d. Don't you think that really the reason for the quick reply was because of the concern that was felt within the Department about the possibility of Mr. Robertson raising some of these issues in the court hearings, and you wanted to have an answer prepared?

Judge McLAREN. I think customarily we answered fairly rapidly these letters, because they had the practice of holding press conferences and making charges and then saying that we had failed to deny them. I think that that probably was more the reason for a prompt response than anything connected with the Hartford case itself.

Senator KENNEDY. As I understand, you have in the file the actual code as to who actually responded to the Robertson letters. Can that material be made available, Mr. Kleindienst, to us?

Mr. KLEINDIENST. I don't know about any code.

Judge McLAREN. We have answered the question now. Mr. Clearwaters advises me that I responded to it. In other words, sometimes I wrote my own letters.

Senator KENNEDY. Then it wasn't a routine—last week when Mr. Robertson's letter came up we had the response that we get thousands of letters, from this thing down there——

Mr. KLEINDIENST. I said that.

Senator KENNEDY. At least the record was not made—we have gone from that point to whether Mr. McLaren actually responded to them himself.

Judge McLAREN. Isn't it the letter as to which I said that I couldn't have made this response without having talked to Mr. Kleindienst about it?

Mr. KLEINDIENST. On that one point about my conversation with Congressman Wilson.

Senator KENNEDY. In refreshing your recollection about the whole letter, Mr. McLaren, don't you think that you would have talked to Mr. Kleindienst about all three of the allegations or charges in responding to it?

Judge McLAREN. I may have had my secretary do the whole thing, Senator. I didn't take that very seriously, frankly. I thought that it was such an outlandish suggestion, and I know I didn't pay attention to it, and I had forgotten it completely until you raised it here. My best recollection was that I had heard these charges made first in the press.

Senator KENNEDY. And you responded personally, right away within the 24 hours, to this letter?

Judge McLAREN. To that one I did.

Senator KENNEDY. Can you tell us why that one rather than any of the others?

Judge McLAREN. I simply said that because I haven't checked as to whether I did or did not in any of the others. In the last year or so after the so-called Nader report came out—I have forgotten just when that was, the summer of 1970 sometime—I think I responded fairly promptly. You see, we felt rather hard used by the Nader people. We had given them access to the Department, and so on, to talk to our people, although I had been told before the investigation started that it was planned to pin my ears back. And we nevertheless tried to give them fair access to our public files and to our people.

Senator KENNEDY. Mr. Kleindienst, could we get the file copy of the letter rather than just the early draft?

Mr. KLEINDIENST. Sure. You mean the original document?

Senator KENNEDY. Yes, the file copy. I don't know whether you have got it there, of whether you can get it up to us later on in the afternoon.

Mr. KLEINDIENST. We would like to have it. I guess we have copies of it. I have no objection to your seeing the original document in this, Senator Kennedy.

Senator KENNEDY. Finally, one point that we were talking about yesterday, Mr. Kleindienst, about the availability of material. We went into this, I believe—the chief counsel, or the counsel of the subcommittee, of the Separation of Powers Subcommittee, I believe, went into the question of executive privilege with Mr. Rehnquist. And I would like to just mention Mr. Rehnquist's response on this. I guess Mr. Erickson hasn't prepared that memorandum.

Mr. KLEINDIENST. I had a conference with Mr. Erickson this morning.

Senator KENNEDY. How was he progressing?

Mr. KLEINDIENST. Well, it progressed to a point that I take the same position today as I did yesterday, for the same reason, Senator Kennedy.

Senator KENNEDY (reading):

Mr. REHNQUIST. Let me add, Mr. Edmisten, the requests for information are never or virtually never addressed to the President himself, I think the President expects the responsible heads of the agencies to whom such requests are addressed to make some sort of a tentative determination as to whether some of the information requested might warrant a claim of executive privilege. And during the course of discussions or negotiations between congressional staff members and agency staff members, certainly it is not appropriate, I think, for the executive people to say if you insist on that, then we will have to go through the procedure for presenting a claim for executive privilege to the President. But that is not the same thing as claiming the privilege.

Mr. EDMISTEN. But under the plain wording of the memorandum, there is no authority for any executive agency or department to refuse outright to give Congress information?

Mr. REHNQUIST. No.

Mr. EDMISTEN. No agency or department is authorized to say no, you shall not have it?

Mr. REHNQUIST. No.

Senator KENNEDY. I thought that as the President's chief lawyer, attorney—

Mr. KLEINDIENST. Not yet.

Senator KENNEDY. It was when he was before the Constitutional Rights Subcommittee. I believe that Mr. Erickson would be interested at least in Mr. Rehnquist's view of that.

Mr. ROHATYN, there was a story this morning about the ITT deal with Russia, a story in the Washington Post. Do you have any comment on that?

Mr. ROHATYN. I haven't seen that story, and I don't have any comment.

Senator KENNEDY. Finally, perhaps we have been over this, but did I understand that you have never talked to Mr. Stans about this case at all?

Mr. ROHATYN. About this case? No, Senator.

Senator KENNEDY. Or any other case of ITT for the Government, or any other case of ITT with the Government?

Mr. ROHATYN. No, about no other case of ITT for the Government, Senator.

Senator KENNEDY. Thank you very much.

I want to thank you gentlemen. You have been very patient with us.

Mr. KLEINDIENST. You have been very patient with us, Senator Kennedy, thank you.

Senator BURDICK. Judge McLaren, I wonder if you might have some spare time. Would it be possible for you to put together a chronology of the events from the time you filed the complaint in these cases until they were settled and order issued on them, the date you filed them, and what you did step by step, is that possible?

Judge McLAREN. We can certainly work on it, Senator. It will take a little time, I am afraid.

Senator BURDICK. Well, we have got some time.

Who you saw when the pleadings were filed, and when the time for the actual extension, and so forth, the various pleadings, steps and so forth.

Judge McLAREN. Yes, sir.

Senator BURDICK. Thank you.

Senator KENNEDY. Mr. Rohatyn, I asked you whether you had been in touch with Mr. Stans. Have you been in touch with Mr. Mitchell, perhaps I asked you that before, on this case at all?

Mr. ROHATYN. On this case? Absolutely not, Senator.

Senator KENNEDY. Or on any of the matters involving ITT?

Mr. ROHATYN. No, Senator.

Senator COOK. Mr. Chairman, do I understand that Senator Burdick was in effect asking for a docket sheet?

Senator BURDICK. No, I was just asking for a chronology of the events that took place. This would include the pleadings that were filed, what contacts you made with the courts and with the people in respect to this case. I am thinking of a kind of a day-to-day diary. I haven't been able to attend all the hearings. It would be helpful to me.

Judge McLAREN. I think I understand what you are asking for, Senator. I think we can put it together.

The CHAIRMAN. Gentlemen, you may be excused. You are subject, of course, as in the case of all witnesses, to being recalled.

Dean Griswold, hold your hand up, please, sir.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. GRISWOLD. I do.

TESTIMONY OF ERWIN N. GRISWOLD, SOLICITOR GENERAL OF THE UNITED STATES

The CHAIRMAN. Give us your title. You are Solicitor General of the United States?

Mr. GRISWOLD. I am Solicitor General of the United States.

The CHAIRMAN. Do you have a statement, Dean?

Mr. GRISWOLD. No, Senator, I do not.

Senator HRUSKA. We have been considering in this committee the litigation springing from the acquisition by the ITT of a number of corporations in recent years, and resulting in at least three lawsuits which were pending and which were undisposed of until consent decrees were entered into some time last year. Just by way of setting a foundation for questions which will be asked of you, the cases that were filed were devised to deal with and to treat with the anticompetitive impact of the various acquisitions of corporations by ITT.

By way of further reminder, the case against the acquisition of the Grinnell Co. had been concluded in the trial court and was on its

way to the Supreme Court. The *Canteen* case had been decided against the Government, and it also was in the process of being appealed. The case against the acquisition of the Hartford Fire Insurance Co. was just about ready for trial, as I understand it, and was scheduled for trial sometime in September 1971.

Do you recall that this recital of the general background is approximately correct?

Mr. GRISWOLD. Senator, the only thing that I know of, of my own knowledge, related to the *Grinnell* case, with which I dealt. I was told about the *Canteen* case in Chicago, and about the *Hartford Fire Insurance Co.* case, but I never dealt with either of those directly. I believe that the situation was—you said the *Canteen* case was in the process of appeal, but the recommendation had not actually come to my office, and I had not acted on anything with respect to the *Canteen* case.

Senator HRUSKA. However, application had come to your office in the instance of the *Grinnell* case?

Mr. GRISWOLD. Yes, Senator. And I had authorized appeal in the *Grinnell* case.

Senator HRUSKA. Your authorization of the appeal of that case was characterized by one of our witnesses here, Mr. McLaren, as being somewhat reluctant.

Is that an unfair statement?

Mr. GRISWOLD. No, Senator—pardon me if I seem to hesitate, I almost said no, Mr. Justice, because that is what I usually have to say when I answer questions.

Senator, there was grave doubt in my office by members of my staff and by myself about the *Grinnell* case. We felt that it would be very difficult to win it, not only because the law with respect to conglomerate mergers is far from clear, but also because in this particular case there had been sharp conflict in the evidence before the District Judge, and the District Judge had found all the facts against us. And all experience shows that it is extremely difficult to win an antitrust case or another type of case in the Supreme Court when you have to attack the findings of fact.

What we would have to do would be to say that the Judge used the wrong standard in making those factual determinations. But my staff and I joined in the view that it would be a difficult case to win. Nevertheless, it was the first conglomerate case which had come along. And I had great respect for Mr. McLaren. It was clear to me that he was most anxious to proceed. And there was no way that we could find out whether the existing statute, section 7 of the Clayton Act, which is a very short statute—there was no way we could find out whether it was adequate to deal with conglomerate mergers except by taking the case to the Supreme Court and seeking their decision.

Senator HRUSKA. And, of course, on that point there was a broad division of professional and legal thinking, wasn't there; the one broad division saying, no, it cannot be done very successfully or very practically under the present statutory form? That first view took the position that it would be best to proceed by way of securing additional statutory authority to deal with conglomerates.

Now, the second school of thought on it—and it had been expressed to the Subcommittee on Antitrust and Monopoly often and by a number of witnesses—the second took the position, yes, we can cover

that situation and deal with it and the anticompetitive results that those conglomerate mergers bring about. And we can do it under the present statute.

I believe that in all fairness to Judge McLaren that the second position was the one that he held. Am I correct?

Mr. GRISWOLD. I understand that that was the one that he held—I think I should say that I know that was the one he held, because we discussed this at considerable length. And my own view was that he was at least entitled to find out, and that if we needed additional legislation, the chances of getting it would be improved if we took the case to the Supreme Court and lost.

On the other hand, if we took the case to the Supreme Court and won, then it would be less necessary for us to seek additional legislation.

Senator HRUSKA. Did you have conferences with Mr. McLaren and Mr. Kleindienst in connection with the *Grinnell* case and the authority that you did grant for the appeal thereof?

Mr. GRISWOLD. Senator, I had conferences with Mr. McLaren and members of his staff in connection with my authorization of the appeal. I had no conference with Mr. Kleindienst at that time. I did have a conference, or I did have a meeting at which Mr. Kleindienst and Mr. McLaren were present—as I indicated in the statement I filed here on Monday—that was on April 19, 1971, which was close to 3 weeks after I had authorized the appeal in the *Grinnell* case.

Senator HRUSKA. Now, in the first conference to which you referred, the one with Mr. McLaren and his staff, did he make clear to you the general pattern that he hoped to be able to develop; to wit, that there conceivably could be an appeal to the Supreme Court which would be based upon a joint consideration of the *Grinnell* case, the *Canteen* case, and later on the *Hartford Fire* case?

Mr. GRISWOLD. That was talked about, Senator, as I recall it. And it was quite apparent to our minds that the *Canteen* case could in all likelihood be brought up so that it could be heard at about the same time as the *Grinnell* case. I think we all recognized that it was extremely unlikely that we would get the *Hartford* case there at the same time, because it had not yet been tried in the district court, as I recall it. And I think it was mentioned several times, oh, if we could only get all three of these cases up at once, our chance would be much better. But we saw no way to do that.

Senator HRUSKA. Because of the potential length of the trial of the *Hartford* case?

Mr. GRISWOLD. The *Hartford* trial, as I recall it, wasn't scheduled to begin until September. And antitrust trials are usually and inevitably quite long drawn out. It seemed unlikely that there would be a District Court decision before, let's say, June of the following year, and we had to get to the Supreme Court after that.

And we couldn't keep *Grinnell* and *Canteen* pending to await *Hartford* coming along.

Senator HRUSKA. Are you familiar with the general content of the consent decrees that were entered into?

Mr. GRISWOLD. Senator, only in a general way. I do not know that I have ever seen the entire consent decree. I have seen and read and considered and approved that part that related to *Grinnell*. What I know about the whole arrangement has come from the newspapers

and from conversations with Mr. McLaren and other lawyers in the Department of Justice. I had no part in formulating the settlement with ITT.

Senator HRUSKA. Were you in a general way familiar with the fact that under that consent decree ITT was required to divest itself of Avis, the fire part of Grinnell, and also of Canteen?

Mr. GRISWOLD. Yes, Senator.

Senator HRUSKA. And the insurance company in New York?

Mr. GRISWOLD. And also a provision under which they agreed not to make further substantial acquisitions for, I think, 10 years, which seemed to me to be a very important part of the overall settlement.

Senator HRUSKA. And in addition to that, the housing end of Levitt.

Mr. GRISWOLD. Yes. But I repeat, I have not seen the full decree, and took no part in formulating it.

Senator HRUSKA. And the terms of the decree also provided that they would be able to retain Hartford in its entirety?

Mr. GRISWOLD. Yes, sir.

Senator HRUSKA. Now, my question is this. I know it is speculative and I know it is conjectural. But what in your judgment would have been the range of any final outcome in court had the litigation proceeded to its ultimate conclusion insofar as the points that are included in the consent decree are concerned?

Mr. GRISWOLD. Well, Senator, that is my best judgment—and I have been wrong in my judgments, but one has to act on his judgments, and I have a background for professional judgment—it was my best judgment that the Government would lose all three cases in the courts ultimately.

Senator HRUSKA. Would you consider that the outcome of the matter as embraced in the consent decree could be considered as favorable for the contentions of Judge McLaren insofar as his ambition and aspiration was to deal with what he deemed to be highly anti-competitive results that came about as a result of these acquisitions? In your judgment was there accomplishment substantially of the program he set for himself?

Mr. GRISWOLD. In my view, Senator, the settlement was an extremely favorable one, a very large divestiture of one of the principal conglomerates, and the first case, at least the first case of any size, where, by any means at all, a conglomerate did divest itself of substantial acquisitions.

Senator HRUSKA. Now, then, if those cases had proceeded to litigation to their ultimate conclusion—and this would take a long time. If they had gone their full length, could you give us an idea of the element of time that would be involved? How many years would it take?

Mr. GRISWOLD. Well, that is a hard question, and would depend upon whether for one reason or another the case was remanded for a new trial, which might lead to another deal and more delay. But I think it would be a minimum of 2½ to 3 years before the *Hartford* case could have been tried, decided in the district court, appealed by one party or the other to the Supreme Court, and decided in the Supreme Court.

Senator HRUSKA. And then the decision in the Supreme Court on that case conceivably could have contained an order to remand with reference to ascertaining further factual questions in one particular or another, is that correct?

Mr. GRISWOLD. Yes, Senator.

Senator HRUSKA. And in your judgment how much of a likelihood was there of that particular development?

Mr. GRISWOLD. I can't make any judgment of that, because it would depend entirely upon the nature of the evidence and the issues that would be developed at the trial, which was entirely prospective. And I was not familiar with those details. I think I can say, though, that with Grinnell and Canteen divested, there is really very little if any basis for a Hartford case. With Grinnell not selling fire extinguishers, which ties in with fire insurance, with Grinnell out of the picture, and with Canteen out of the picture——

Senator HRUSKA. And Levitt?

Mr. GRISWOLD (continuing). It would be very difficult to proceed with the *Hartford* case.

Senator HRUSKA. Mr. Chairman, I know my time is up. I will save that question for a later time.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hart?

Senator HART. Dean, thank you for your testimony.

I am troubled by an underlying element here. It has nothing to do with stories about impropriety in this case, but on the problem of the conglomerate, and what we have heard here as limiting the Government's ability to govern it. We have been told that what Mr. McLaren thought to be an ideal resolution of the ITT conglomerate was in the opinion of many people unacceptable from a national policy point of view.

You have got something so big that divestiture would cause such a rippling effect that it might jeopardize the general security, that it might even produce a significant economic downturn nationally. Besides that, its operation was so widespread, in addition to being so large, that you had a balance-of-payments problem, and you had international and offshore implications.

For that reason we couldn't do what seemed to be sensible in terms of the elimination of restraints on competition and potential restraints.

The underlying thing, then, that bothers me is, have we reached a point in our society where there has been permitted to develop a private concentration of power which, because of the enormity of their reach, make impossible the application of public policy to them?

What do you do about it?

Mr. GRISWOLD. Senator, I find that a very interesting and puzzling question, on which I don't really feel qualified to answer. I am not an economist, I am not a public finance man. I am not even an anti-trust lawyer. I think one of the functions of the Solicitor General is to be a generalist, to look things over generally, and to be able to take advice from the lawyers on his staff and in the Department in whom he has confidence. What you have referred to relates essentially to the settlement of the case. And I had nothing whatever to do at any time with the settlement of the case or even whether it should be settled. There certainly are problems there with which various officers on the Government should be concerned, not only the judicial branch, but the executive and the legislative. And they seemed to me on the whole to be above and beyond anything which is involved in this particular matter that is before the committee now.

I am not trying to duck your question, I am just saying I don't really feel qualified to answer.

Senator HART. Though one thing you are trying to duck. I think you are just reminding us that we have yet to get an answer on something we had better get an answer to, or the day will come when there will be private power—and there needn't be anybody with a black hat involved with its creation—beyond reach.

You say you are not an economist, and you are not a public finance man, and you are not an antitrust lawyer. But many of us have talked to all of those people, and either they come up with, "I am not sure," or each has a different opinion about it. And all the time the indices show that economic concentration continues to increase. And the thing that may have gotten too big now—and we don't know how to unravel it—just keeps getting bigger.

I know when you talk like this you sound like William Jennings Bryan warmed over. But I am sure that it is vastly worse now than when Bryan was talking about it, and we really must come to something.

Mr. GRISWOLD. Senator, it is my view, for what it is worth, that the law with respect to conglomerate mergers ought to be strengthened. And I hope that the Congress will do that.

In the meantime, those of us in the Department of Justice have to proceed with the law as it now stands. And that left considerable difficulties on the problem in this case, and with respect to the problem to which you refer.

Senator HART. I hope that one day, and soon, there will be presented to you for appeal a case that uses section 7 to move on a conglomerate where the facts in the lower court are good rather than bad, because I wouldn't make book on how soon Congress is going to do much about basic antitrust laws, it is more likely that the court will.

Mr. GRISWOLD. I understand that, Senator. And that is my reason for authorizing the appeal in the *Grinnell* case, although I thought that our chances were not very good.

Senator HART (presiding). Senator Cook?

Senator Cook. Thank you, Senator Hart.

Dean Griswold, I couldn't agree more with the philosophical approach of Senator Hart. But it is kind of like saying, we have met the enemy, and it is us. It is Congress that wrote section 7 of the Clayton Act, and it is Congress if it wants to do something about it, which should do it.

Senator HART. We can't even get a modest change of the Robinson-Patman Act.

Senator Cook. I would say that the subcommittee of which the distinguished Senator from Michigan is chairman in the Judiciary Committee has the largest budget of any subcommittee in all the Judiciary Committee. And to that extent something ought to be presented to the Congress shortly.

Senator KENNEDY. Have you checked Internal Security?

Senator Cook. I can give it to you exactly. The Senator's subcommittee gets a little over \$700,000, and Internal Security gets \$500-and-some-odd thousand.

Senator HART. Have you looked up the lineup of the subcommittee?

Senator Cook. Yes, I have, being on the Rules Committee I had an opportunity to see that. I am not happy with the budget of either one of them, I might say.

Dean Griswold, when were you appointed Solicitor General of the United States?

Mr. GRISWOLD. October 23, 1967.

Senator COOK. And you were the appointment of whom, sir?

Mr. GRISWOLD. President Johnson.

Senator COOK. From your testimony, Dean Griswold, I gather that you were of the opinion that neither the *Grinnell* nor the *Canteen* nor the *Hartford* case could be won by the Government?

Is that a correct statement of what you said?

Mr. GRISWOLD. It was very unlikely that they would be won. I was not positive about it. But they didn't look like good bets to me.

Senator COOK. And you also said in the *Grinnell* case, which was the instant case before the court, that every question of fact presented by the Government at the lower court level had been overruled by the lower court?

Mr. GRISWOLD. I am not sure I said every. Certainly the major questions of fact had been found.

Senator COOK. I wrote down here, all questions of fact had been——

Mr. GRISWOLD. The essential questions of fact had been found against us.

Senator COOK. And, therefore, you thought that it would be very difficult for the Government to win its case?

Mr. GRISWOLD. Yes, Senator.

Senator COOK. And you approve the consent agreement in the *Grinnell* case, is that correct?

Mr. GRISWOLD. Yes, Senator. I did that by signing and filing the motion in the Supreme Court to dismiss the appeal, to which was attached the full text of the consent decree with respect to *Grinnell*. And I wouldn't have done that if I had not approved it.

Senator COOK. And, therefore, Dean Griswold, with the knowledge that you had of the *Hartford*, *Grinnell* and *Canteen* cases, the facts that you considered under a section 7 Clayton Act, under the so-called anticonglomerate movement of the Justice Department, you thought that none of these cases was a good bet to be won before the Supreme Court?

Mr. GRISWOLD. That is right, Senator.

Senator COOK. And under those circumstances, Dean Griswold, if one has knowledge that the consent agreement was entered into, where ITT was allowed to keep *Hartford*, but gave up *Grinnell*, *Canteen*, *Avis*, *Levitt*, *Hamilton*, and *Life Insurance Company of New York*, one would say that this was a good in-house settlement under an anticonglomerate movement by the Antitrust Division?

Mr. GRISWOLD. Not merely a good settlement, Senator, but a very good settlement.

Senator COOK. Thank you very much, Mr. Chairman.

Thank you very much, Dean.

Senator HART. The Senator from Massachusetts.

Senator KENNEDY. I want to welcome you here, Dean Griswold. It is kind of a surprise to have you in the late afternoon. But we have gotten used to surprises in the late afternoon in the last couple of days.

Are you familiar with the Walsh letter that was sent to Mr. Klein-dienst?

Mr. GRISWOLD. Yes, Senator, I have read it within the last few days.

Senator KENNEDY. Did you read the Walsh letter on April 19, or prior to that time?

Mr. GRISWOLD. No, to the best of my recollection, I did not see it on April 19. It either was read from or it was summarized in the meeting that I had on April 19. But it was not shown to me, and I did not read it. I did not know then, for example, that there was a memorandum attached to it, which I have now seen.

Senator KENNEDY. Were you otherwise aware that ITT no longer was arguing to the Department that the Department was wrong in the law, as suggested in the Walsh memorandum?

Mr. GRISWOLD. I am sorry, Senator, I didn't understand.

Senator KENNEDY. Were you aware that in the Walsh letter that Mr. Walsh had mentioned to Mr. Kleindienst:

Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department.

Did anyone read that particular excerpt?

Mr. GRISWOLD. To the best of my recollection, Senator, I did not then know that that was in the letter. As I have said, I didn't see the letter. And I don't think that was either read or referred to at the meeting I attended.

Senator KENNEDY. Were you otherwise aware of that view expressed by Mr. Walsh?

Mr. GRISWOLD. No. And it is a view with which, as I have indicated, I would disagree.

Senator KENNEDY. Your memo says, you were told the Walsh letter raised the question whether new legislation should be obtained. Reading page 2 of your memorandum, paragraph 2:

During the discussion it was stated . . . that a letter had been received from Lawrence E. Walsh, of the Davis Polk firm in New York, requesting that the Government reexamine the question whether conglomerate mergers should be reviewed by litigation or through requests for further legislation.

You have now read the Walsh letter, as I understand it? You said you had?

Mr. GRISWOLD. Yes, I have.

Senator KENNEDY. Do you agree with me that there is no reference in there to seeking new legislation?

Mr. GRISWOLD. I would have to get it out again. But as I recall it, the burden of the letter was that it should be determined, if there was to be a change in the application of section 7 of the Clayton Act, it should be considered at the highest level of the Government, whether this should be done through court decision, or through legislation.

Senator KENNEDY. Can you remember what representations were made to you that would have supported the view that you expressed in this second paragraph on page 2, your own memorandum?

Mr. GRISWOLD. I don't think I can say more than I have said, that it was suggested that we should take more time to consider whether we should even seek to proceed through further litigation. And if through that consideration it was decided not to proceed through litigation, that would involve of course, dismissing or, not perfecting,

the *Grinnell* appeal. And in order to allow consideration of that question, I was asked to seek an extension of time, which I did.

Senator KENNEDY. I am not really sure that is what the Walsh letter suggested.

Mr. GRISWOLD. Senator, I didn't see the Walsh letter at that time. I don't know what was in it—I did not then know what was in it. I did know that there was a suggestion from Mr. Walsh that we should not proceed at once, but should give consideration in consultation with other agencies of the Government to the question whether we should proceed by litigation. I think I drew the inference that if there was to be proceeding on the issue, not by litigation, it would have to be by seeking legislation. But the immediate issue before me was whether we should seek an extension of time with respect to the pending litigation.

Senator KENNEDY. Of course, hadn't that decision to move ahead with the litigation already been made by the Antitrust Division a long time ago?

Mr. GRISWOLD. The decision to appeal had been made by me. It could be changed. I am a fairly firm person. But in the years I have been Solicitor General I have changed my mind a number of times. I have let other people convince me that I was wrong, and have acted accordingly. And in this case the delay through seeking extension of time had no effect whatever on when the case would be heard in the Supreme court. It wasn't going to be heard until the fall of 1971 anyhow. And seeking an extension of time for further consideration seemed to me to be only the sensible way to handle the situation where a request was made that we give further consideration.

Senator KENNEDY. Is it still your position that the Department should not ask for extensions after the normal time—I believe it was 9 days late, in this case—unless there is good reason?

Mr. GRISWOLD. It does not ordinarily, Senator. I think I said there that we didn't usually. I made a check this afternoon, and it is not complete. But over a period of about 15 months I have found five cases where we applied for extensions of time within the 10-day period, including one of which, after we applied for the extension of time, we didn't file the paper on, because on giving it further consideration, we decided not to do it.

Senator KENNEDY. And that is out of how many cases?

Mr. GRISWOLD. It is hard for me to say. Perhaps a hundred.

Senator KENNEDY. Wouldn't you agree with me, then, it isn't the usual procedure?

Mr. GRISWOLD. Oh, yes, there is no doubt that it is unusual.

Senator KENNEDY. If you had shared the view of Mr. McLaren or Mr. Mitchell or Mr. Kleindienst, and Mr. Walsh, on the willingness of the Supreme Court to rule against the conglomerate mergers, wouldn't your view on the settlement be different?

Mr. GRISWOLD. I have never heard Mr. Mitchell express any view on this whatever. I don't believe I have ever heard Mr. Kleindienst express any view on the substance of this question. I have talked extensively with Mr. McLaren about it. Mr. McLaren had a dogged determination to go ahead, and an engaging optimism about it. I found no reason to stop him from going ahead. But I didn't share his optimism.

Senator KENNEDY. Now, at some time you had a call from either Mr. McLaren or Mr. Walsh about the 18th, that is right, April 18?

Mr. GRISWOLD. No, I never had a call from either. I understand now that the 18th was a Sunday, so this must have been on the 19th.

Senator KENNEDY. And your secretary told you that the Deputy Attorney General wanted you down in his office?

Mr. GRISWOLD. That is right.

Senator KENNEDY. Could you tell us about that meeting?

Mr. GRISWOLD. I think I have summarized it quite completely in the statement I have already filed.

Senator KENNEDY. There was no one else there?

Mr. GRISWOLD. No one else was there. It didn't last more than 5 minutes, perhaps less.

Senator KENNEDY. And as I understand from your memorandum—could you repeat for us what you believe to be the reasons for seeking the delay in the filing of the jurisdictional statement?

Mr. GRISWOLD. The basic reason was that the Deputy Attorney General wanted it. And I understood the underlying reason was, the letter which he had received from Mr. Walsh which requested it, which was summarized, but which letter I didn't see—I didn't ask to see, it wasn't withheld from me—it was simply, as I recall it, it was on the desk or the side, in front or beside the Deputy Attorney General as he was talking to me, and he pointed to it—but the substance was that there were some matters here which ought to receive further consideration.

Senator KENNEDY. There is nothing further that you can add about that conversation?

Mr. GRISWOLD. No.

Senator KENNEDY. He just said that there are other matters that have been included in this letter that deserve further consideration?

Mr. GRISWOLD. No; as I understand it, it was matters relating to whether we should proceed by litigation on conglomerate mergers.

Senator KENNEDY. The materials we received from the Department show the Solicitor General's memorandum up to March 26, 1971. Can you give us any idea what, if anything, happened between March 26 and April 19?

Mr. GRISWOLD. The jurisdictional—let me start over again, Senator. We had probably 30 or 40 other cases in my office moving through during that time. Once the appeal was authorized, word would be sent to the Antitrust Division, and they would be requested to make a draft of the jurisdictional statement. The jurisdictional statement would be prepared, it would come to my office, and it would be worked over in detail by one of my younger staff members, and then reviewed thoroughly and carefully by my senior staff member, and then would come to me, and then would go to the printer.

And as I recall it, it went to the printer on Thursday or Friday before April 19, and was due back on the afternoon of April 19 in printed form.

Senator KENNEDY. You have supplied materials, or the Department has, a series of memoranda, the following documents—you are familiar with those items here? Are you familiar with the letter from Mr. Wilson that was sent to the committee?

Mr. GRISWOLD. I don't know what you are referring to, Senator.

Senator KENNEDY. There were four Solicitor General's memos, one dated February 24, 1971, one dated March 2, 1971, one dated March 15, 1971, and one dated March 25, with two covering buck slips.

Mr. GRISWOLD. And these were prepared by whom?

Senator KENNEDY. These are by Mr. Bruce Wilson, Acting Assistant Attorney General, Antitrust Division.

Mr. GRISWOLD. These would have come from the Antitrust Division to my division, and would have been considered by my staff, and would have been in the papers which came to me. I do not now have any specific recollection of the detailed contents of such memoranda. I know that the Antitrust Division was much more hopeful about this case than my staff and I were. I suppose the closer you get to the firing line the more realistic you become in your judgments about the prospects of the case.

Senator KENNEDY. You are familiar with the material that is in these memorandums. There is obviously a good deal of material that is very much pertinent to the various companies and is of a private nature. But do you see any reason why just the general kinds of conclusions that have been expressed would not be of interest or not be made available generally to the committee or the staff, without—

Mr. GRISWOLD. The general kind of conclusions that have been expressed? I don't know what you mean.

Senator KENNEDY. I suppose that the reason that the material is not made available generally is because in the memorandum there is a lot of trade information that has been based upon investigation done by the Justice Department. Of course, we are not interested in those, at least I am not, in a particular way. But do you think it would be useful or helpful if, I guess, summations or conclusions or statements and that type of material was made available to the committee? You are a good deal more familiar with these kinds of memorandums.

Mr. GRISWOLD. I think we have a very real problem, Senator. Anybody who is in a public job has to rely very heavily on the advice of his staff, and in particular to be sure that the staff give him their full, complete, uninhibited view about the situation. And if members of the staff have to write such memorandums with a view to the fact that some day they will be published, and so on, I think it might impair the public service. And I should think I would have to say that the answer to your question is "No."

Senator KENNEDY. Finally, you had no idea when you went to the Justice Department that Mr. Kleindienst was going to see Mr. Rohatyn?

Mr. GRISWOLD. You mean when I went to the Deputy Attorney General's office?

Senator KENNEDY. Yes.

Mr. GRISWOLD. No, I never heard that name until I read it in the newspapers a few days ago, I knew nothing about it then or later.

Senator KENNEDY. Thank you.

Senator HART. The Senator from Maryland.

Senator MATHIAS. Dean Griswold, I join other members of the committee in welcoming you here.

I must say that I am somewhat shocked by the judgment that you made that the conglomerate in question was really beyond the reach of the law in any effective way.

Mr. GRISWOLD. On the record in this case, with the findings against us, I think that must be taken into account.

Senator MATHIAS. That is right. The track record in the courts is certainly not encouraging, and lends support to your conclusions. And I think that becomes a very serious consideration to the Congress over and above the immediate problems that we have in the matter we are now discussing.

I have myself over a period of time felt that the Congress leans much too hard on both the courts and on the Antitrust Division in making the law as well as administering law, and judging law, in those matters. And I have proposed, and now have a resolution handy, for review of the antitrust statutes. But I am wondering, in view of the admonition that you gave to Senator Hart a few minutes ago, that you would like to see the statute strengthened, whether you have any specific language?

Mr. GRISWOLD. No, Senator, I haven't given consideration to that. I first began talking about conglomerates with my colleague at the Harvard Law School years ago, Donald Turner, who became Assistant Attorney General of the Antitrust Division. And he never moved against conglomerates when he was Assistant Attorney General, despite the fact that that was when they were building up, because he felt that except in every clear cases there was no way to move under the law. I disagreed with him. When Mr. McLaren came in I was delighted that he moved forward vigorously with respect to conglomerates. And I suspect that that was one of the reasons why I went along with his recommendation to appeal the *Grinnell* case. He was doing what I wanted to see done, and I thought I should go up there with him.

Senator MATHIAS. I don't know that we want to prolong this particular discussion at this moment in connection with this proceeding. But I hope that the chairman of the Antitrust Subcommittee might take the opportunity which arises as a result of this discussion to reopen his considerations in this area, and we could invite you back to discuss it after you have had time to consider it at your leisure.

Thank you very much.

Senator HART. I wish the Senator from Maryland was on the subcommittee. We have been discussing it for at least 5 years. And all we have proved is that there is a lot of economic concentration. We can't even get this subcommittee to agree to increase the criminal fines available for a hardnosed Sherman Act violation, much less get around to a law which will unscramble the big ones.

The Senator from California.

Senator TUNNEY. Thank you, Mr. Chairman.

Dean Griswold, it is a great pleasure to welcome you before the committee. And I thank you for your testimony.

I was wondering when it was that the Government lost the last antitrust case before the Supreme Court?

Mr. GRISWOLD. About 4 or 5 weeks ago, to our great distress, we lost a most important criminal antitrust case, the *Pfizer* case, by a 3-to-3 vote. And I regret exceedingly that we did.

Senator TUNNEY. What was the last time before that?

Mr. GRISWOLD. I think we have, but I cannot now—I am not prepared on this—I cannot now recall an antitrust case which we have lost.

Senator TUNNEY. But it is a rare occurrence, is it not?

Mr. GRISWOLD. The Government's success before the Supreme Court in anticompetitive merger cases is good. I think it is equally fair to say, we have never won nor lost in the Supreme Court a conglomerate merger case, because there haven't been any yet, largely because until fairly recently people didn't really think it was covered by the Clayton Act.

Senator TUNNEY. Are there many cases in the lower courts now?

Mr. GRISWOLD. Not many, no. I understand there are some. But I don't administer the Antitrust Division, and I don't know what cases they have started.

Senator TUNNEY. Are there many cases in which the Supreme Court in an antitrust case in the last 10 years has reversed a lower court decision, a lower court decision which ruled in favor of the defendant, the merger, those involved in the mergers, the corporations involved?

Mr. GRISWOLD. I think so, Senator, but I have never reviewed those, and I am not prepared out of my head to give the names of cases. As I have said, I am not an antitrust lawyer, and I can't give you the names of cases.

Senator TUNNEY. Could you explain, Dean Griswold, the procedure by which a consent decree is filed, or how or if the filing is publicized, and who has an opportunity to comment during what period of time?

Mr. GRISWOLD. Frankly, Senator, I cannot, because I have nothing to do with that. The handling of the Government's antitrust work in the district courts, where consent decrees are filed, is done by the Antitrust Division, with which I am not connected. My office deals only with the question of authorizing appeals, and handling cases in the Supreme Court. I think out of my general knowledge, and in a back corner of my head, I have some notion that these things have to be filed now 30 days in advance, and that people who want to object can come in, and that the court then goes ahead and makes whatever decision it thinks is appropriate.

But I do not do that kind of work myself.

Senator TUNNEY. So you are not familiar with what type of opportunity a private citizen would have——

Mr. GRISWOLD. Beyond understanding that there is a 30-day period, that the decree, the proposed decree must be announced, filed in court, and must wait 30 days, and then the district court would be moved to enter the decree.

Senator TUNNEY. And do you know what access the private citizen would have to the files of the Justice Department, or to the files of the defendant in the case, which would enable him to identify the procedures that were followed in the settlement of the case?

Mr. GRISWOLD. No, Senator, I would have no responsibility for that, and don't really know anything about it.

Senator TUNNEY. I understand that the Senator from Nebraska has some more questions.

Senator HRUSKA. I have one or two more, but don't let me cut you short.

Senator TUNNEY. I wonder, Dean Griswold, if you would care to comment on the following proposition. What would you think about a procedure to be followed by the Justice Department which would require that any *ex parte* meeting or phone conversation between

defendants in pending antitrust cases and the Assistant Attorney General, Antitrust Division, or his deputy, or the Deputy Attorney General, or the Attorney General, or the White House staff, be reported in written form by the particular official and listed with the court in the suit that is pending, including a description of general purpose of the visit?

Mr. GRISWOLD. Senator, I haven't given any thought to that. Offhand, I don't see much objection to requiring a report that there was a meeting. When you go further to report the subject matter, I have more difficulty. I don't know any reason why two litigants—because that is what you are dealing with—ought not to be free to meet to discuss the disposition of their case. And I should think that in the long run it was highly advantageous to the Government that antitrust cases can be settled and don't all have to be tried. I would be perfectly willing to give thought to the item you suggest, but I don't really feel prepared to give any view about it here. And I think that is an important question other than the one we are concerned with here.

Senator TUNNEY. Thank you very much, Dean Griswold.

Senator HART. The Senator from Nebraska.

Senator HRUSKA. Mr. Chairman, those of us serving on this committee have been privileged to become acquainted with this witness over the years. And we know of his standing as an educator in the law, as a scholar in the law, as a practitioner in the law, and also his very distinguished service in the Department of Justice.

However, many of our colleagues haven't had that opportunity to get acquainted with him. And I am suggesting to the chairman that it would be well to include at the outset of the testimony of Dean Griswold a résumé of his achievements, his career, and his eminence in this field.

Senator HART. Without objection.

(The résumé referred to follows:)

BIOGRAPHICAL SKETCH OF SOLICITOR GENERAL ERWIN N. GRISWOLD

Lawyer; formerly law school dean, born East Cleveland, Ohio, July 14, 1904.

A.B. 1925, A.M. 1925, Oberlin College; LL.B. 1928, S.J.D. 1929, Harvard Law School.

HONORARY DEGREES

L.H.D.: Tufts University 1949; Case Institute of Technology 1950.

LL.D.: University of British Columbia 1949; Brown University 1950; University of Sydney 1951; University of Melbourne 1951; Dalhousie University 1952; Harvard University 1953; Amherst University 1953; Columbia University 1954; University of Richmond 1954; Brandeis University 1956; University of Michigan 1959; Northwestern University 1960; Allegheny College 1961; University of Notre Dame 1961; University of Toronto 1962; University of Edinburgh 1963; Williams College 1966; Western Reserve University 1967; Tulane University 1968; Boston College 1968; Princeton University 1968.

D.C.L.: University of Western Ontario 1961; Oxford University 1964.

Litt. D.: Western Reserve University 1967.

Married to Harriet Ford; two children—Mrs. Daniel Murrow, William E. Griswold.

Admitted Ohio bar, 1929, Massachusetts bar, 1935; practiced with Griswold, Green, Palmer & Hadden, Cleveland, 1929; attorney in Office of Solicitor General and Special Assistant to the Attorney General, Washington, D.C., 1929-34; Assistant Professor of Law, Harvard Law School, 1934-35; Professor of Law, 1935-46; Dean and Charles Stebbins Fairchild Professor of Law 1946-50; Dean and Langdell Professor of Law 1950-67; Solicitor General of the United States, 1967 to date.

Member, Alien Enemy Hearing Board of Massachusetts, 1941-45; consulting expert, U.S. Treasury Department, 1942. Trustee: Bradford Junior College, 1942-49; Teachers Insurance and Annuity Association, 1942-46; Harvard Law Review Association 1938-67; Oberlin College, 1936 to present. President, Association of American Law Schools, 1957-58. On the Board of Directors of the American Council of Learned Societies, 1959 to 1968. Member of the U.S. Civil Rights Commission, 1961-67. Member: American Bar Association: State Delegate for Massachusetts in the House of Delegates 1962-68, Board of Governors 1966-69; President, American Bar Foundation, 1971- ; Massachusetts Bar Association; American Law Institute; American Philosophical Society; Phi Beta Kappa. Fellow, American Academy of Arts and Sciences (Vice President, 1946-48).

Clubs: Harvard (Boston and New York); Cosmos (Washington); Century Association (New York); Charles River Country Club; Burning Tree Club (Washington, D.C.).

Author: Spendthrift Trusts 1936; 2d ed. 1947; Cases on Federal Taxation, 1940, 2d ed. 1946; 3d ed. 1950; 4th ed. 1954; 5th ed., 1960, 6th ed. 1966; Cases on Conflict of Laws (with others), 1941; revised edition 1957; 5th ed., 1964; The Fifth Amendment Today, 1955, Harvard University Press; Law and Lawyers in the United States, Harvard University Press 1964; Contributor to legal periodicals.

Senator HRUSKA. Dean Griswold, the effects of that postponement that you petitioned the court for and which was granted in the *Grinnell* case, did that either accelerate or postpone the actual appeal date of that case?

Mr. GRISWOLD. Not at all. It postponed for about 3 weeks the actual filing of our jurisdictional statement. The jurisdictional statement was filed. It was precisely the same one that had been prepared before, except that since it was a month later we prepared a little paper sticker that said May 1971, and pasted on top of the April 1971, that was printed. It had no—it didn't change a syllable in the jurisdictional statement which we filed.

Senator HRUSKA. And had no effect at all one way or another upon the position of the parties, the merits of the case, the pleadings, or the issues or any other aspects of it?

Mr. GRISWOLD. None whatever. And after it was filed, counsel for ITT received a number of extensions of time for filing its response, I think three altogether. And they had not filed any response by the time the case was settled. Of course, the reason they sought the extension was because by that time negotiations for settlement were in the process. We had no objection to that. But the case would not have been considered by the Supreme Court as to whether there was probable jurisdiction or not, until October in any event.

Senator HRUSKA. You have testified as to your analysis of the probabilities of success of the litigation involved, the *Grinnell* case as well as the *Canteen* case. You also reported to us that Judge McLaren had contrary views in that regard. However, am I right in saying that you did grant the authority to go ahead with the appeal in the *Grinnell* case for the reason that you thought that Mr. McLaren, because of the strength of his feeling in the matter, had a right to try out his theory of the law, and to go forward with the appeal, is that a fair summary?

Mr. GRISWOLD. Yes, Senator. I thought there was a measurable chance that he was right. We ought to know anyhow. He was a fine man in the Antitrust Division; I wanted to back him; and he wanted it.

And so I said, let's take the appeal and find out.

Senator HRUSKA. So in due time you did secure dismissal of the *Grinnell* appeal, the papers pending there, because of the entry of the consent decree?

Mr. GRISWOLD. Yes, Senator. There is a widespread misunderstanding about these cases. I have the Washington Star here of last Friday. On the front page it says, "Refers to the Republican Administration's decision to abandon prosecution of three antitrust suits." We didn't abandon prosecution of three antitrust suits. By the settlement, we won two of the antitrust suits.

This morning's New York Times says, "Before the Justice Department agreed to drop prosecution of the three suits." Well, that is like saying that you agree to drop prosecution of a criminal case because the defendant pleaded guilty. There were three suits, and we substantially won two of them. And having won the two of them, we didn't have any ground whatever for winning the third one. And this was in fact a very substantial victory for the Government, and the first one in the whole conglomerate field, probably setting a great precedent in the area, and it seems to me most misleading to keep telling the public that the Government dropped three suits in the antitrust field. It didn't.

Senator HRUSKA. And furthermore, you secured in the consent decree the 10-year limitation on further acquisitions except upon very limiting conditions?

Mr. GRISWOLD. Yes, Senator.

Senator HRUSKA. And that would probably have been difficult to attain in a court order, because it would not have been an issue in the case had the litigation proceeded in its normal course. And in its normal course the issue would have been, should divestiture be made.

Mr. GRISWOLD. All that the Government sought in those cases was divestiture. And that is what it got in the *Canteen*, *Grinnell*, and several other cases.

Senator HRUSKA. It is a little harsh, isn't it, when a case is won and a decree of that kind is entered, to then endure comments on it as being an abandonment of prosecution, when the prosecution actually had succeeded?

Mr. GRISWOLD. I share Mr. McLaren's emotion about this. I think he performed as a very fine public servant in this case, and gave great service to the Government. It seems to me that ought to be recognized instead of being attacked as it has been.

Senator HRUSKA. That is all I have, Mr. Chairman.

Thank you.

Senator HART. Dean, what precedent was established by the settlement of these cases?

Mr. GRISWOLD. That the Government could obtain substantial divestiture in a conglomerate merger case.

Senator HART. Under section 7?

Mr. GRISWOLD. Under section 7, not a traditional precedent, not a case that you can cite, but a practical precedent, which meant that people on the other side, or perhaps I can put it this way, people on the other side evaluated our chances as better than I did, which may show that I was wrong, and it might help to educate me with respect to future cases that come along.

Senator HART. To what extent is a precedent established—and I am not now questioning the wisdom—to what extent is a precedent established by the settlement that the insurance activity of a conglomerate cannot be challenged if there are ripple effects and offshore implications?

Mr. GRISWOLD. I don't think you can talk about insurance in general. It was the insurance in this particular setting.

Senator HART. Let me eliminate the insurance, then, and ask to what extent a precedent could be claimed where there are ripple effects and offshore adverse balance-of-payments consequences. You have got another precedent?

Mr. GRISWOLD. Senator, I don't know anything about offshore balance-of-payments problems.

Senator HART. You describe what you thought was established by the settlement, namely, divestiture in a case of a conglomerate could be obtained under section 7.

Mr. GRISWOLD. Yes, Senator.

Senator HART. Now, as you look at that settlement, do you also find an indication that it can't be obtained if there is a balance-of-payments problem and a rippling effect?

Mr. GRISWOLD. No, I don't think that appears. I think what does appear is that if you want to settle a conglomerate antitrust case, if the Government wants to settle the conglomerate antitrust case, it can't get 100 percent of what it wants. It can get 60 or 65 percent, which is what I would say—well, maybe that is a little high—yes, 60 or 65 percent, because the Hartford was the biggest part of it.

On the other hand, a great many other things came in. And I think I will raise it to 70 percent. The Government really got a 70 percent settlement here, and anybody who tries lawsuits knows that when you can get that, that is pretty good, particularly after you have lost, completely, two of the major cases in the lower courts.

Senator HART. I would be out of my mind to attempt to quarrel with your academic evaluation of precedents. But I just ask the question, in order that we not close with a lack of balance here. You say there is a practical precedent, and no court precedent, but there are two sides to that coin when you look at the settlement. That is the point I am making.

You can point to the achievement obtained. Antitrust defendant lawyers can point to why you didn't go to bat, and say, that is a precedent, too. And it applies in any case, because it is so big we are going to upset the balance of payments, and we will ripple the market. And that is the point of my making the observation.

Mr. GRISWOLD. I repeat, Senator, I know nothing about that, and I have heard nothing about that during any of my considerations.

Senator HART. Well, you should have been with us for the last few days.

Mr. GRISWOLD. Yes; I have heard something about it lately. But that was the first time that it had ever come to my attention in connection with this case.

Senator TUNNEY. Mr. Chairman, would you yield for a unanimous-consent request?

Senator HART. Yes.

Senator TUNNEY. I would like to ask unanimous consent that the letter that I referred to when I was questioning Mr. Kleindienst, my letter to him of March 6, 1972, be incorporated in the record at the point that I initiated my questioning of Mr. Kleindienst.

Senator HART. Without objection.

The Senator from Massachusetts.

Senator KENNEDY. Mr. Solicitor, has there been any other occasion in the times that you have served under this or previous administrations when you have been directed by the Deputy Attorney General to seek a delay 9 days after the time expired?

Mr. GRISWOLD. No—if you say 9 days, the time hadn't expired, Senator, and the rule says that you are supposed to apply not less than 10 days before the time expires, but makes it perfectly plain that you can apply within that period, but you have got to show some reason. And I don't recall any case where we did it on the next to the last day.

On the other hand, it is not at all unprecedented that we do make applications within the 10-day period for one reason or another.

Senator KENNEDY. But have you made them at the direction of the Deputy Attorney General any time?

Mr. GRISWOLD. I don't like to accept your word "direction." This was at the request of the Deputy Attorney General. I cannot now name you some. I have had many conversations with the Deputy Attorney General about cases and have frequently heard people, usually other agencies of the Government, who have expressed an interest or concern, and I have delayed my action until I heard them. Ordinarily, however, that would not require any application for an extension of time, because we had enough time. I think this one is the only one that I know of within 1 day, and as far as I can recall, within a 10-day period.

Senator KENNEDY. Do you know Mr. Walsh at all, Dean?

Mr. GRISWOLD. Yes, I have know Judge Walsh at least since the time he was a judge, and then as Deputy Attorney General, and since.

Senator KENNEDY. But you never had occasion to talk with him about this case?

Mr. GRISWOLD. Never whatever about this case, except on Monday afternoon of this week he called me on the telephone and asked me what I said in that statement. But he didn't in any sense complain about it, he simply wanted to know what it was so that he could respond to questions that were coming to him.

I read him, over the telephone, the paragraph relating to him. And he thanked me. And I did talk with him to that extent on Monday of this week. Otherwise I have never talked with him about this case.

Senator KENNEDY. I want to thank you for coming up here this afternoon and being so helpful.

Mr. GRISWOLD. Thank you, Senator.

Senator KENNEDY. You have certainly been very forthright and candid with us, and I want to express my own personal appreciation to you. It is nice to see you again.

Mr. GRISWOLD. Thank you, Senator.

Senator HRUSKA. Dean Griswold, the 10-day rule has been mentioned often. That rule is simply this, is it not, that if there is any request for a postponement of a filing or to meet a deadline, the request for such postponement should be made at least 10 days prior to the date that is sought for extension?

Mr. GRISWOLD. That is right, Senator.

Senator HRUSKA. So that is the general rule. However, the Supreme Court does say, if it is within those 10 days, for good reason, we will still allow the postponement.

Now, much ado has been made about the Supreme Court allowing a request for postponement within that 10-day period. It is surely my hope that the Supreme Court won't become suspect in a series of accusations, charges, and innuendos in regard to actually allowing something to happen that is very, very ordinary. And the fact is, isn't it, that the defendant got three postponements after that?

Mr. GRISWOLD. Senator, this was entirely in accordance with the rules of the Supreme Court. Mr. Justice Harlan, to whom it was presented, could have refused the extension. In fact he granted it quite promptly. We don't go up in person on those, we send them to the clerk's office. But it was in a matter of hours that we were advised that the extension had been granted.

I may say that that was what I anticipated. But if he had said, no, you came too late, I would have reported that back, and it would have been within his judicial discretion to do so. He didn't do it. So no problem about that ever arose.

Senator HRUSKA. That is all I have.

Senator HART. Dean, for all of us, thank you very much.

This concludes the testimony for today. We will adjourn, to resume at 10:30 a.m. tomorrow in this room. The first witness will be Mr. Jack Anderson.

(Whereupon, at 4:40 p.m., the hearing recessed, to reconvene at 10:30 a.m. on Thursday, March 9, 1972.)

RICHARD G. KLEINDIENST

THURSDAY, MARCH 9, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m., in room 2228, New Senate Office Building. Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. Stand up, please, sir, both of you. Is this Mr. Hume?

Mr. ANDERSON. Mr. Hume.

The CHAIRMAN. Do you solemnly swear the testimony both of you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ANDERSON. I do.

Mr. HUME. I do.

TESTIMONY OF JACK ANDERSON, COLUMNIST, ACCOMPANIED BY BRIT HUME

The CHAIRMAN. Mr. Anderson, you may proceed. Now, I do not have a copy of your statement.

Mr. ANDERSON. We gave copies to the committee.

Senator KENNEDY. It has been supplied to the committee, Mr. Chairman.

The CHAIRMAN. What?

Senator KENNEDY. We have them. They were supplied to the committee.

The CHAIRMAN. We had 12 copies.

Mr. HUME. Have this one. I do not need it.

Mr. ANDERSON. My name is Jack Anderson. I have asked my associate to sit here with me, Brit Hume, one of the finest young investigative reporters in the country. He did most of the interviewing in this case, and I think his testimony, his personal direct testimony will be helpful.

Mr. Chairman, before I begin my testimony, I want to emphasize one point. I am not here to defend allegations I have not made. Mr. Kleindienst began his testimony before this committee with a ringing denial of what he referred to as charges that I influenced the outcome

of the ITT antitrust case for partisan political reasons. I have never made such a charge. While denying this accusation that was not made, the Attorney General-designate acknowledged virtually every charge I did make. His version of events departed from mine only when he and his fellow witnesses began dancing a semantic tango around the word "negotiate." I will say more about this later.

A number of press accounts have said that I accused the administration of settling the ITT antitrust cases on terms favorable to the company in return for a cash pledge of up to \$400,000 for the Republican Convention. I have not made this accusation. I have reported the contents of an extraordinary internal memo from ITT which strongly suggests that such a tradeoff occurred. And I reported the explanation of the memo given by its author. To further clarify the record, I have brought with me copies of the three columns I have published on this subject and ask that they be made part of the record.

The CHAIRMAN. All right. Wait a minute. They will be made a part of the record, if we can get them.

Mr. ANDERSON. Thank you. One of those columns is here but the others will have to be inserted by the committee.

(The three columns as published in the Washington Post follow:)

[From the Washington Post, Tuesday, February 29, 1972]

THE WASHINGTON MERRY-GO-ROUND: SECRET MEMO BARES MITCHELL-ITT MOVE

By Jack Anderson

We now have evidence that the settlement of the Nixon administration's biggest antitrust case was privately arranged between Attorney General John Mitchell and the top lobbyist for the company involved.

We have this on the word of the lobbyist herself, crusty, capable Dita Beard of the International Telephone and Telegraph Co. She acknowledged the secret deal after we obtained a highly incriminating memo, written by her, from ITT's files.

The memo, which was intended to be destroyed after it was read, not only indicates that the anti-trust case had been fixed but that the fix was a payoff for ITT's pledge of up to \$400,000 for the upcoming Republican convention in San Diego.

Confronted with the memo, Mrs. Beard acknowledged its authenticity. The next night, badly shaken and acting against the wishes of ITT officials who wanted her to leave town, she met with my associate Brit Hume at her home to try to explain the document.

By this time, she said, ITT security officers from company headquarters in New York had put most of her office files through a document shredder to prevent their being subpoenaed after disclosure of the memo.

She said she met with Mitchell at the Governor's mansion in Kentucky during a dinner reception given by Republican Gov. Louie Nunn last May after the Kentucky Derby.

At the governor's reception, she said, Mitchell took her and Nunn aside and to her astonishment and shock, launched into an hour-long diatribe against her. He criticized her for putting pressure on the Justice Department through Congress and the White House on the anti-trust cases.

She said Mitchell confided to her he was sympathetic to ITT but had been prevented until then from helping the company because of the zeal of the Justice Department's anti-trust chief, Richard McLaren.

After his harangue, Mrs. Beard said, Mitchell agreed to discuss the anti-trust matters and asked bluntly, "What do you want?" meaning what companies did ITT most want to keep if the anti-trust cases were settled.

"We have to have Hartford Fire because of the economy," Mrs. Beard recalled saying.

She said she also told Mitchell ITT wanted to keep "part of the Grinnell Corporation," a manufacturing concern. She said Mitchell at first replied, "You can't have part of Grinnell," but he subsequently relented.

And, she said, when the Justice Department announced its settlement with ITT on July 31, more than two months later, it conformed to the agreement she had made with Mitchell.

Mrs. Beard insisted the subject of the GOP convention never came up with Mitchell and was never a factor in the anti-trust matter. But this clearly contradicts her memorandum, which was written about six weeks after the Kentucky Derby dinner.

It is addressed to W. R. (Bill) Merriam, head of ITT's Washington office. It is marked "Personal and Confidential and its last line asks, "Please destroy this, huh?"

The memo warns Merriam to keep quiet about the ITT cash pledge for the Republican convention. "John Mitchell has certainly kept it on the higher level only," the memo says, "we should be able to do the same . . .

"I am convinced, because of several conversations with Louie (Gov. Nunn) re Mitchell that our noble commitment has gone a long way toward our negotiations on the mergers coming out as Hal (ITT President Harold Geneen) wants them.

"Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering . . .

"If (the convention commitment) gets too much publicity, you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known."

ITT REPLIES

ITT issued the following statement yesterday.

"There was no deal of any kind to settle our antitrust cases. It is unfair to the individuals involved to even suggest such a possibility. Agreement was reached with the Justice Department only after hard negotiations between our outside legal counsel and the then-Assistant Attorney General Richard McLaren and his staff.

"Neither Mrs. Beard nor anyone else except legal counsel was authorized to carry on such negotiations. The June 25, 1971, memorandum attributed to Mrs. Beard was seen for the first time by the ITT official to whom it was addressed when it was brought in by a member of Mr. Anderson's staff last week.

"The San Diego contribution of the Sheraton Hotels was made as a non-partisan joint effort of the San Diego community and was purely in support of a local situation. Sheraton has two hotels in San Diego and a third is under construction which would be completed in time for the convention. There was no tie-in of any kind between this local joint participation and any other aspects of ITT's business."

Bell-McClure Syndicate

[From the Washington Post, Wednesday, March 1, 1972]

THE WASHINGTON MERRY-GO-ROUND: KLEINDIENST ACCUSED IN ITT CASE

By Jack Anderson

We have now established that Attorney General-designate Richard Kleindienst told an outright lie about the Justice Department's sudden out-of-court settlement of the Nixon administrations' biggest antitrust case.

The case involved the International Telephone and Telegraph conglomerate, which appeared on the way to a Supreme Court showdown with the Justice Department over ITT's takeover of the huge Hartford Fire Insurance Co.

Last July, however, the case was abruptly settled. The terms, considered highly favorable to ITT, were announced at the same time ITT secretly pledged up to \$400,000 to support the Republican convention in San Diego this year. A check for \$100,000 has already been written.

Denying any connection between the convention cash and the antitrust settlement, Kleindienst insisted that the Justice Department's antitrust staff had been free from any political pressure from above.

"The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren (then head of the antitrust division)," Kleindienst said in a letter to Democratic National Chairman Larry O'Brien.

However, we have now learned that Kleindienst himself held roughly a half-dozen secret meetings on the ITT case with a director of the company before the settlement was reached.

The director, Wall Street financier Felix Rohatyn, conceded to us that he met in private with Kleindienst, who was then Deputy Attorney General, at the same time McLaren was negotiating with ITT's lawyers.

"I was supposed to make the case on the economic side of it," Rohatyn told my associate Brit Hume. He said he particularly stressed to Kleindienst ITT's arguments for keeping Hartford Fire.

KLEINDIENST DUPLICITY

Kleindienst's duplicity is further evidence that the administration has much to hide in the ITT affair, which looks more suspicious the more we investigate it.

Not only Kleindienst, but his boss, outgoing Attorney General John Mitchell, has now been linked to the settlement. Mitchell had officially disqualified himself from the case because of an old relationship with ITT. Yet Dita Beard, the company's top lobbyist, has now acknowledged that she arranged the settlement with Mitchell in a private conversation at the governor's mansion in Kentucky after last year's Kentucky Derby.

Her admission came after we obtained an extraordinary confidential memo, written by her, from ITT's files. The memo suggested strongly that the settlement was made in exchange for ITT's pledge of cash support for the Republican convention.

Mrs. Beard also told us that the day after we confronted her with the memo, ITT security men from New York shredded many of her office files because they feared the papers might be subpoenaed when the memo became public.

Mitchell would not discuss the matter with us. John Hushen, a Justice Department spokesman, told us there was "no truth" to Mrs. Beard's story. He acknowledged, however, that Mitchell has spoken to Mrs. Beard at the governor's mansion.

We gave Hushen specific questions to ask the Attorney General. But four hours later, after conferring with Mitchell, he called us back without the answers.

Instead, he urged that we withhold our story on Mrs. Beard's version of events until, as Hushen put it, "we get all our ducks in a row." He said Mitchell would "prove" the falsehood of Mrs. Beard's incriminating memo, but three days later, no proof had appeared.

REPUBLICAN NAMES

The June 25, 1971, memo is studded with such big Republican names as President Nixon, Mitchell, California Lt. Gov. Ed Reinecke, San Diego Congressman Bob Wilson, White House aide Bob Haldeman and H. S. (Hal) Geneen, ITT's president.

It is addressed to W. R. (Bill) Merriam, manager of ITT's Washington office. "I thought you and I had agreed very thoroughly that under no circumstances would anyone in this office discuss with anyone our participation in the Convention, including me," Mrs. Beard wrote.

"Other than permitting John Mitchell, Ed Reinecke, Bob Haldeman and Nixon (besides Wilson, of course) no one has known from whom that 400 thousand commitment had come . . . John Mitchell has certainly kept it on the higher level only, we should be able to do the same . . ."

"I am convinced, because of several conversations with Louie (Nunn) re Mitchell that our noble commitment has gone a long way toward our negotiations on the mergers eventually coming out as Hal (Geneen) wants them. Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering . . ."

"If (the convention cash) gets too much publicity you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known. Please destroy this, huh?"

[From the Washington Post, Friday, March 3, 1972]

THE WASHINGTON MERRY-GO-ROUND: CONTRADICTIONS CITED IN ITT CASE

By Jack Anderson

The Justice Department and International Telephone and Telegraph are now trying to lie their way out of a scandal over the suspicious, sudden settlement of a landmark antitrust suit against ITT.

In earlier columns, we disclosed a remarkable ITT memo indicating the Justice Department granted the favorable settlement in exchange for cash support of the upcoming Republican convention in San Diego.

The author of the memo, ITT lobbyist Dita Beard, told us she arranged the settlement herself in a private conversation with Attorney General John Mitchell at a Kentucky dinner party.

Mitchell refused to talk to us. A spokesman, John Hushen, urged us to withhold our story until he could "get our ducks in a row." He then waited three days before calling us back with a terse statement from Mitchell.

The statement says the Attorney General "was not involved in any way with the Republican National Committee convention negotiations and had no knowledge of anyone from the committee or elsewhere dealing with International Telephone and Telegraph."

This is false. In mid-May last year, California Lt. Gov. Ed Reinecke and an aide, Edgar Gillenwaters, met with Mitchell in his Washington office to discuss efforts to hold the convention in San Diego.

MITCHELL MISLEADS

We could not reach Reinecke, but Gillenwaters told us he and Reinecke personally informed Mitchell that ITT had offered to put up as much as \$400,000 to support a GPO convention in San Diego.

"He liked the idea of (having the convention in) San Diego," Gillenwaters said of Mitchell, "He didn't need any persuading. He said, 'If you can do it, more power to you.'"

ITT also issued a statement on the matter which insisted that only its lawyers were authorized to deal with the Justice Department on the antitrust cases. "Neither Mrs. Beard nor anyone else except legal counsel was authorized to carry on such negotiations," the statement said.

This is also false. Felix Rohatyn, an investment banker and director of ITT, told us he held a series of about a half-dozen secret meetings during the merger negotiations with Deputy Attorney General Richard Kleindienst. Rohatyn said he was specifically authorized to "make the case on the economic side" by ITT President Harold S. Geneen.

Rohatyn's acknowledgement also puts the lie to an earlier statement by Kleindienst, who has been named to replace Mitchell as Attorney General. On December 13, Kleindienst wrote to Democratic National Chairman Larry O'Brien to deny that high-level political pressure had been exerted on the Justice Department's anti-trust staff in the ITT case.

"The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren (then head of the anti-trust division)," the Kleindienst letter said.

Obviously, if Kleindienst were holding secret talks with Rohatyn on the case, it could not have been "handled" and negotiated "exclusively" by McLaren and ITT's lawyers.

Bell-McClure Syndicate

The CHAIRMAN. Did you have them there?

Mr. ANDERSON. I did, but they disappeared, so we have sent for some more copies.

They will show that Mrs. Dita Beard's denial of the implication in her memorandum of a deal involving the convention cash and the antitrust cases was mentioned not once but twice in the first column we published on this matter.

There has been a concerted effort to conceal the truth about ITT's settlement of its antitrust battle with the Justice Department. This effort began before we published our first column on the subject and has continued without interruption through the testimony this committee heard from Mrs. Beard's doctor. The public record on this episode is blotted with falsehood. The aura of scandal hangs over the whole matter. It will not be dissipated merely by the self-serving disclaimers of present and former members of the administration and officials of ITT. It certainly will not be dispelled by the kind of testimony which this committee has heard from Mr. Kleindienst Mr. Rohatyn, Judte McLaren and Dr. Liszka.

Mr. Kleindienst came here burdened by his previous emphatic statement that the *ITT* cases were "handled and negotiated exclusively" by Mr. McLaren. Our report that he and Mr. Rohatyn had a series of private meetings on the case cast doubt, to put it mildly, on the truth of Mr. Kleindienst's statement. But instead of admitting manfully that his previous statement was misleading, Mr. Kleindienst sought to wiggle out from under his misrepresentation with a silly and artificial semantic distinction. Mr. Kleindienst did not deny having the meetings. Indeed, he said his contacts with Mr. Rohatyn "set in motion a series of events" which led to the resolution of the case.

Yet he argued before this committee that he had done no negotiating. Perhaps more astonishing, Mr. Rohatyn and even Judge McLaren endorsed this transparent disclaimer. Webster defines "negotiate" as meaning, "to confer, to bargain, to discuss with a view to reaching agreement." Can Mr. Kleindienst deny that he conferred with Mr. Rohatyn? Can he deny that they discussed the cases? Can he deny that the end object of their discussions was agreement? The answer to these questions is obvious. Yet these three grown men sat before this committee and insisted Mr. Kleindienst had not negotiated. A further word about Mr. Rohatyn's testimony. His company last week issued a statement saying all authorized negotiations with the Justice Department on this case were done by legal staff. The meetings between Rohatyn and Kleindienst obviously raise questions about the truth of this statement. And whatever Rohatyn may now be saying, there must be no mistake about what he told us before he realized the word "negotiate" could be embarrassing to his friend, Mr. Kleindienst. His first statement when asked about the meetings with Mr. Kleindienst was, "I, as a director of ITT and an investment banker, handled some of the *negotiations* [emphasis added] and presentations to Kleindienst and McLaren." He said he was specifically assigned to confer with Mr. Kleindienst by ITT President Harold Geneen.

Mr. Kleindienst further testified that he had no knowledge that he could recall of the cash commitment ITT made for the Republican Convention until November or December. Yet an exchange of correspondence dated September 21 and 22 makes it clear that one of Ralph Nader's associates did his best to inform Mr. Kleindienst of the commitment much earlier. Perhaps Mr. Kleindienst never read the letter. Perhaps he simply turned it over to Mr. McLaren for a reply. Yet Mr. McLaren, who presumably read the letters before signing the reply, can't seem to remember them either. Still more puzzling is Mr. McLaren's hazy recollection of the Nader associate involved, Reuben Robertson. Mr. Robertson has spearheaded the

Nader organizations efforts to head off several ITT mergers. At the time he wrote his letter to Mr. Kleindienst, the case he was referring to was still open. His letter was accompanied by a legal brief in the matter and three affidavits. He was clearly a major participant in the case and had been in regular contact with the antitrust division. But Mr. McLaren can barely remember him and can't remember his letter at all.

Mr. McLaren's memory has failed him in other matters. Under questioning, he made the startling revelation that the outside expert he used to evaluate Mr. Rohatyn's arguments might have been selected by President Nixon's ambassador to big business, Peter Flanigan. Again, Mr. McLaren couldn't remember, but he thought it might have been Mr. Flanigan. Well, it turns out not only that it was Mr. Flanigan, but that the outside expert, Richard Ramsden, himself a former White House fellow, never discussed the matter with Mr. McLaren at all. He never got the chance to tell Mr. McLaren that his company had an interest in ITT. Instead, Mr. Ramsden dealt only with Peter Flanigan. Yet when Mr. McLaren was asked whether he ever discussed the ITT case with Mr. Flanigan, he said, "Not that I recall at this time and I think that I would recall if I had."

While there may be some doubt about whether Mr. McLaren talked about the settlement of the ITT case with Mr. Flanigan, there can be no doubt whether he talked it over with his own economic experts. He didn't. Indeed, Mr. McLaren's former special economic assistant, Kenneth Elzinga of the University of Virginia, not only wasn't consulted but thinks the settlement was—in his words—"a sham and a whitewash." What's more, two outside experts the Government earlier used as witnesses in the case never were consulted about the settlement and both say it was a bad settlement.

Mrs. Beard has told us that the day after we confronted her with the memo, ITT security officials from company headquarters in New York appeared in Washington. Before her eyes, she said, they put a number of her office files through a document shredder to prevent their being subpoenaed after her memo became public. Among the documents destroyed, she said, was her copy of a memo written last spring to Edward J. Gerrity, Jr., ITT senior vice president for public relations. The memo told Gerrity of Mrs. Beard's impending visit to the Kentucky Derby and her invitation to a dinner at the Governor's mansion where Attorney General John Mitchell was expected to be present. Mrs. Beard told us this memo led to a phone call from Gerrity telling her what concessions to seek from Mitchell if the subject of the antitrust cases arose.

The CHAIRMAN. Now, you say, "We." Is that you or who?

Mr. ANDERSON. In this case the conversation between Mrs. Beard was with Brit Hume, and if I could finish, I think there would be two or three other things that he can testify to directly.

We tried to check the report of the shredded documents with ITT officials. Bernie Goodrich, manager of press relations here in Washington, had no comment. We asked him if he would deny that it happened. Again, no comment. There was no reference to the shredding of the papers in a statement the company issued last week.

We did our best to get Attorney General Mitchell's version of events before we published our first column. His spokesman, John Hushen, was first reached early in the afternoon of February 25. We related in brief what we had been told by Mrs. Beard. Mr. Hushen

immediately said there was "no truth" to it. He said another reporter had inquired about the same thing about 2 months earlier and that he had checked it out with the Attorney General at the time and found it to be untrue. We explained that we not only had Mrs. Beard's highly detailed account of the Kentucky Derby dinner but also a memorandum suggesting that the Attorney General had helped the company in exchange for the cash support of the convention. We read Hushen the whole memo and dictated the parts dealing with the Attorney General slowly so that he could take them down. We also related details of Mrs. Beard's account of the Kentucky dinner. We asked to speak to Mr. Mitchell. Failing that, we asked Hushen to relay two specific questions to his boss. No. 1, did he and Mrs. Beard ever discuss the antitrust cases involving ITT at the party in Kentucky and, No. 2, did they ever discuss the company's convention commitment. He promised to get back to us shortly. A short time later, we decided we should add a third question to Mr. Hushen's list; namely, did the Attorney General and Mrs. Beard talk at all during the party after the derby. He had already gone up to Mr. Mitchell's office so we called him there. When he came on the line, we apologized for interrupting him and asked that he also put the question to the Attorney General whether Mr. Mitchell and Mrs. Beard had talked at all. He said, "I would never deny that." Our response was something like, "So they did have a conversation." His reply was that it consisted of "hello and goodby."

Now I understand that the Attorney General is going to appear here. Whatever he testifies, I think it is significant that his office's initial version was that he and Mrs. Beard merely changed greetings. We waited in vain throughout the afternoon for Hushen to call us back. Finally, he called after 6 o'clock. He did not have the answers to our two questions although it had been some 4 hours or more since they had been put to him. Instead, he made a pitch for us to hold up our story until he and Mitchell could, as he put it, "get all our ducks in a row." They still have not gotten all of those ducks in a row.

We told him we could not hold up the news, that Mrs. Beard was a person of sufficient standing that what she said was news in this matter. We promised, however, that we stood ready to meet with the Attorney General any day, night, or weekend to get his version of events. Mr. Hushen said the Attorney General could "prove" that the memo was false. We told him that we were eager to see the proof and that when he showed it to us, we would immediately say in the column that the memo had been proved false. We waited all weekend for a call from the Attorney General's office. Monday came and went without a word from Mr. Hushen. Finally, after 6 o'clock Monday, we heard from Mr. Hushen. He was irate that we had sent out a column on Mrs. Beard and her memo. He said he had a statement from Mitchell, which he read to us. I will say more about that statement shortly. He told us he had worked over the weekend on it. But he said he had done no work on the statement Monday at all. He said he called us after receiving a call from the St. Louis Post-Dispatch alerting him about our forthcoming column. Then, he said, he had read the statement to the caller. So it is clear not only that Mr. Hushen took all weekend to bring forth his terse statement, but that he withheld it from us all day Monday although he knew we were waiting to hear from him.

These details of our trials and tribulations trying to get Mr. Mitchell's side of the story would be insignificant except for one thing. They raise this question: Why, if he were innocent of any wrongdoing, did he not immediately tell us his version of the events in Kentucky? Why could he not have immediately—or even shortly—answered our questions about his conversation with Mrs. Beard? Why was Mitchell's statement kept under wraps for a full day even after it was ready?

Now, a word about the Attorney General's statement. It began with this sentence. "I was not involved in any way with the Republican National Committee convention negotiations and had no knowledge of anyone from the committee or elsewhere dealing with International Telephone & Telegraph." Now, this statement is false. There are several versions of when the Attorney General first learned of the convention commitment from ITT, but they all occurred before he made this statement. We were told by Edgar Gillenwaters, an aide to California's Lt. Gov. Ed Reinecke that he and Mr. Reinecke told the Attorney General about the convention commitment from ITT last May in the Attorney General's office. When we spoke to Mr. Gillenwaters, he remembered the meeting quite vividly. Mr. Gillenwaters said the Attorney General's attitude toward his and Reinecke's efforts to get the convention into San Diego was, "Well, if you can get it more power to you." Gillenwaters said the Attorney General "had apparently sensed that the San Diego city councilmen" were not enthusiastic about the idea of having the convention there. He said the Attorney General was told that ITT's Sheraton division was willing to "stand in," as he put it, for up to \$400,000 to support the convention.

Mitchell, according to Gillenwaters, "liked the idea of San Diego. He didn't need any persuading." After Gillenwaters had talked to us, Reinecke talked to two other reporters and gave them the same version. Now Reinecke is singing a different tune. He says they didn't talk with the Attorney General about the convention until September. This makes no sense. The whole gist of Mr. Gillenwater's account of the meeting is that there was doubt whether the convention would be held in San Diego. By September, no such doubt remained. The city had already been selected. This raises serious questions about the truth of Mr. Reinecke's statement. He should be required to explain it under oath.

In trying to track down the facts surrounding the Beard memorandum, we spoke to Jack Gleason, a former White House staff member who is now a private public relations consultant, with ITT as one of his clients. Gleason told us that last June, about the time of this memo, he discussed the convention with William Merriam of ITT's Washington office. He said Merriam was concerned because confusion had developed over whether ITT was going to put up money or services to support the convention. Gleason said he spoke to William Timmons of the White House staff about the matter in an effort to help clear up the confusion. Timmons is acting as White House liaison to the group planning the convention, so he was a logical person to call. Gleason said when Dita Beard learned that Timmons had been let in on the secret of ITT's convention commitment, she called Timmons and gave him an angry lecture. We thought Gleason's comments to be of some significance because they seem to corroborate

the circumstances mentioned in Mrs. Beard's memo, namely, that a previously uninformed person at the White House had been let in on the secret and had made her angry.

We spoke to Gleason again over the weekend about this and he reconfirmed that he had talked to Mr. Timmons about the time of the memo. Mr. Gleason said he had recently checked with Mr. Timmons about it and Timmons also confirmed it. But when we talked to Mr. Timmons this past Sunday, he denied the whole thing. He said he never knew about the convention commitment until much later than June and definitely never had talked to Mr. Gleason about it in June. Told of Timmons' denial, Mr. Gleason said, "I know I picked up the phone and talked to him at the White House during this immediate period. I talked to him this past week and he confirmed that we had a conversation. I just wanted to make sure what you and I discussed was right. I just don't understand that he's got anything to lose by telling the truth. For him to tell you that he and I never discussed this is a lie and it astounds me. * * * He's got to be an idiot to think I'll go on the stand and say I didn't discuss it with him. I will not perjure myself for anyone." We asked Mr. Timmons if he would be willing to testify under oath on his version. He said he would not. I leave it to the committee to resolve this new falsehood.

When Dr. Liszka testified here, Senator Kennedy asked him whether during his visit with Mrs. Beard at the hospital, she told him anything about what had happened while Mrs. Beard was meeting earlier with ITT officials in New York. The doctor said she had not told him anything except that she was in Mr. Gerrity's office at one time during the trip. The question was subsequently put to him another way and got about the same response. But the doctor told us on two occasions prior to his testimony that Mrs. Beard had told him a number of things about what had transpired in New York. Here is what the doctor said by telephone from Denver Saturday about how Mrs. Beard was treated by ITT officials in New York.

They were mean to her. They never let her talk to President Geneen. They made her talk to two lawyers.

The doctor also said that Edward J. Gerrity, Jr., ITT's senior vice president for public relations, had lied. He explained that Mrs. Beard was sitting in Gerrity's office when Geneen called Gerrity. He said Mrs. Beard could hear Geneen's voice through the receiver when Geneen asked if Mrs. Beard were still there. Although she was sitting right in Gerrity's office, the doctor said, Gerrity told Geneen she had already left. The doctor also had this to say, "The company told her to go, to get lost. I think this was part of a plan to discredit her." We spoke to the doctor again in person the night before he testified and he reiterated these points. Yet the doctor told this committee under oath that he had not been told by Mrs. Beard what instructions the company had given her or what conversations had occurred in New York. Now he was either misleading us or misleading the committee. It certainly seems implausible that he would fabricate for our consumption details of a conversation that never occurred. It seems equally unlikely that he would have a sudden lapse of memory about events that just happened and that he had discussed with a reporter twice. Moreover, he has now repeated what he told us to the New York Times, together with the explanation that he didn't tell

the committee about it because it was "negative" information. This hardly seems an adequate explanation. Therefore, I think this committee should recall the doctor to explain the apparent discrepancies between his statement to us and his statements under oath.

We now understand that Dr. Liszka and his wife, who is also a doctor, have been under investigation in recent weeks for an alleged violation of the Social Security Act. While we understand Dr. Liszka has been exonerated, the investigation regarding his wife—with whom he maintains a joint practice—is still in progress. Moreover, Dr. Liszka underwent a lengthy interrogation under oath on February 22, only 2 days before he appeared at Mrs. Beard's house as my associate, Mr. Hume, was interviewing her. The Justice Department says he approached its officials last Friday to volunteer his help in knocking down what he considered inaccurate press reports of the interview. How seriously can anyone take the volunteered testimony of a man whose wife and whose medical practice are caught up in a felony investigation? This question is underscored by the fact that Dr. Liszka had consultations about his testimony with Justice Department officials before he gave it. Furthermore, why was this committee not informed of the status of the investigation involving Dr. Liszka before he testified instead of afterward?

Adding further to the questions about Dr. Liszka's credibility is information we have just received from Martin Price, a free-lance investigator who has worked with us in the past. Mr. Price said he has learned—and Dr. Liszka has confirmed—that the doctor has done referral work for the Hamilton Life Insurance Co., an ITT subsidiary.

We understand that he has performed a number of physical examinations on potential Hamilton policyholders. Certainly the committee has a right to know why Dr. Liszka did not make this clear in his testimony. And it also has a right to know why the Justice Department, which informed Mr. Kleindienst of the criminal investigation involving Dr. Liszka the morning of the doctor's testimony, waited until after he had appeared to inform the committee about it.

Now, I would like to make a few points about the surprise appearance of ex-Governor Nunn before the committee. His testimony makes it clear that he has perhaps the most erratic memory in the history of American politics. When our column on the Beard memorandum was first published, Mr. Nunn was called for comment by the Associated Press. He acknowledged having John and Martha Mitchell as his guests at the Kentucky Derby. But he said he did not know whether Mr. Mitchell had met Mrs. Beard at his home. The same day the Chicago Daily News quoted Nunn as acknowledging that Mrs. Beard and Mr. Mitchell were at the reception following the Derby. The Daily News quoted Nunn as saying, "I never heard any discussion about anything except generalities."⁷ These two news organizations reached Mr. Nunn before he had read John Mitchell's statement about our column. Afterward, he decided to comment no further. He issued a statement saying he stood on what the Attorney General said.

However, Ward Sinclair of the Louisville Courier-Journal persuaded Mr. Nunn to answer one question about the nature of the discussion between Mr. Mitchell and Mrs. Beard. Mr. Nunn's answer was that he was "unaware" of the topic of discussion. So first Nunn didn't know if Mrs. Beard and Mr. Mitchell had even met. Thereafter,

he acknowledged they met but didn't know what they talked about. Then, he came before this committee with elaborate testimony about an embarrassing confrontation between Mrs. Beard and Mr. Mitchell. He now has full recollection of several efforts by Mrs. Beard to approach the Attorney General about ITT and the treatment the company was receiving from the Justice Department. He remembers how Mr. Mitchell fended off Mrs. Beard and how she later collapsed on the floor, the apparent victim of a heart ailment. He even remembers Mrs. Beard visiting him the next day to apologize for the incident and to seek his advice as to whether the embarrassment would hurt her company or cost her her job. Once he had described these events in considerable detail, Mr. Nunn's memory once again turned to molasses.

Our sources close to ITT tell us the company is planning an all-out effort to discredit Dita Beard. We understand that Vice President E. J. Gerrity is masterminding the effort to paint his only Washington staff lobbyist as a crackpot and a drunk. We are told that an effort will be made to show that her memorandum was not written last June but at some later time in a fit of irrationality.

We understand the company may produce testimony to the effect that the memo was not typed on an ITT office typewriter. We anticipate an effort to show that the version of the Kentucky Derby dinner she gave my associate was inaccurate because of her mental condition. We expect that Mr. Mitchell will abandon his "Hello-Goodbye" version of the Kentucky meeting and tell the committee that he scolded Mrs. Beard for trying to lobby him improperly. Other ITT officials may appear to tell what a problem Mrs. Beard has become. The committee may even be told that she was nearly fired because of her abrasive personality.

We hold no brief for Dita Beard. Investigative reporters and lobbyists who operate behind the scenes for major corporations are hardly natural allies. But we urge the committee to remember this: until this memorandum leaked out, Mrs. Beard was regarded as one of the most powerful lobbyists in Washington. Fortune Magazine chose her as one of the city's top lobbyists. She had a close relationship with many men in power. Some may now abandon her. But we urge the committee to seek out them all, so that the true picture of Dita Beard will emerge.

Whatever this committee may ultimately conclude about Mrs. Beard and her memorandum, the real focus of this investigation must be Richard Kleindienst and his qualifications to be the top law enforcement officer in the Nation.

Mr. Kleindienst is a man who has trouble recognizing a crime when he sees one. Now, let us make no mistake about it. The contribution of \$400,000 by a corporation to support a political convention is a crime. It directly and clearly violates the Corrupt Practices Act, which specifies it is "unlawful for * * * any corporation * * * to make a contribution or expenditure in connection with any * * * political convention." Yet when questioned about this, Mr. Kleindienst said he didn't have an opinion. He protested that it was "customary" for political conventions to receive such donations. Do the American people want as their top policeman a man who thinks crimes are not crimes because they are "customary"?

This is not all. When asked by Senator Tunney whether there might be a bribe in the ITT contributions, Mr. Kleindienst said his

idea of a bribe was a situation in which someone walked into his office and offered a large political contribution in exchange for a favor. Yet this very scenario has already happened to Mr. Kleindienst. Robert Carson, a Senate staff member, walked into his office and offered a \$100,000 political contribution in exchange for Kleindienst's going to bat for someone who had been indicted for stock fraud. We can all be grateful that Mr. Kleindienst didn't take the bribe. But he apparently didn't realize that it was a bribe. For not until a week later, when he learned the FBI was already investigating the offer, did he report it to the Attorney General.

There can be no doubt that Mr. Kleindienst played a major role in the settlement of the ITT antitrust cases. He helped bring about a settlement experts have denounced as a sham. Having done this, he issued an utterly disingenuous statement about the matter indicating he had no role whatever. He then came before this committee and lacked the candor to admit his statement had been misleading. Mr. Kleindienst has now refused to disqualify himself from making the Justice Department decision about what documents this committee will be shown in this case. Apparently in defiance of an order given by the President himself, Mr. Kleindienst is arrogantly asserting that he has the power to make these decisions without involving executive privilege and regardless of the obvious conflict involved. This country needs as its top law enforcement officer a man who understands the law and respects the truth. Richard Kleindienst is not such a man. He is unfit to be Attorney General.

The CHAIRMAN. Let us have order.

Mr. ANDERSON. Mr. Hume and I are available, of course, for whatever questions the committee may have.

Senator HART. Mr. Chairman, did I understand that Mr. Hume had a prepared statement, or not?

Mr. ANDERSON. No. Mr. Hume will respond to questions.

Senator ERVIN. Well, Mr. Anderson, your analysis of various conversations convinces me that Lord Coke was right when he said that the scratch of a pen is worth the slippery memory of many witnesses.

It calls to my mind one of the first cases in which I participated, in which my client was charged with murdering his wife by stabbing her in the neck. Four witnesses appeared at the trial and testified that they went to the jail together, and that each one of them asked my client whether he had killed his wife. The first witness said my client did not say anything in reply to the question, but that he shook his head no. The second witness said that he answered the question with a simple yes and nothing else. The third witness said that he said yes, but that it was an accident. The fourth witness said that he answered, yes, I took the knife and jabbed it in her throat.

So I still have, as a result of your summation and analysis, a very profound conviction that Lord Coke was right that one scratch of a pen is worth the slippery memory of many witnesses.

That is the only questions or observations that I have at this time.

Mr. ANDERSON. Well, Senator, the Senator is known to have a strong sense of decency.

Senator ERVIN. Thank you.

Mr. ANDERSON. I might add that I am concerned about the Senate's understanding of right and wrong. Sometimes I am concerned that there is not a clear appreciation for the difference between right and wrong, the difference between truth and falsehood.

Senator ERVIN. That is all. I have no questions.

Senator HRUSKA. Mr. Anderson, on page 12 of your statement you make the flat and unqualified conclusion:

The contribution of \$400,000 by a corporation to support a political convention is a crime.

Are you a lawyer, Mr. Anderson?

Mr. ANDERSON. No, but I understand the English language.

Senator HRUSKA. You what?

Mr. ANDERSON. I say I understand the English language, and I will read some of the English language to you if you will allow it. Here is the Federal Corrupt Practices Act. It says:

It is unlawful—

Senator HRUSKA. Will you cite the section so that we can find it?

Mr. ANDERSON. Certainly. It is section 610:

It is unlawful for any national bank or any corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election, or any political convention, or caucus held to select candidates for any political office, or for any corporation whatever or any labor organization to make a contribution to expenditure in connection with any election in which Presidential and Vice Presidential electors and a Senator or Representative in or a delegate or a resident commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices; or for any candidate, political committee, or other persons, to accept any contribution prohibited by this section.

Now, I do not think you need to be a lawyer to understand that, Senator.

Senator HRUSKA. Well, that is your opinion but, of course, you prefaced——

Mr. ANDERSON. Well, what is your opinion?

Senator HRUSKA. You prefaced your statement most accurately that you are not a lawyer but that you can read the English language. That is not all that it does take.

There was an opinion on this question by the Department of Justice, by John C. Kenney of the Fraud Section, and it is dated January 12 or 15—the copy is a little blurred at this point—and it holds that contributions of this type are valid, that they are within the law, that section 608 and the one that you cite, 610, do not apply to the situation of a civic committee which is organized for the purpose of inviting and hosting a political convention.

Furthermore, I am informed by a memorandum handed to me by the Senator from Pennsylvania that corporations can give contributions to both parties' conventions under the so-called Williams amendment, and can claim a tax deduction for them. Ads can be bought in convention booklets and funds can be used for convention purposes. This is a legitimate practice of both parties since 1967.

So, I would like, Mr. Chairman, to introduce into the record a copy of this legal opinion, and I have an idea, with all due deference to one who can read the English language, that probably in the minds of most reasonable men this opinion would take precedence over one given by a nonlawyer, even though he is able to read English fluently and with great clarity.

(The letter referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 17, 1972.

FRANK DEMARCO, JR., ESQ.,
Kalmbach, DeMarco, Knapp & Chillingworth, Atlantic Richfield Plaza, Los Angeles,
Calif.

DEAR MR. DEMARCO: This is in response to your letter of January 3, 1972, with respect to the applicability of Sections 608, 610 and 611 of Title 18, United States Code, to a local non-profit committee formed for the sole purpose of bringing a political convention to a community.

With respect to Section 608, it expressly exempts state and local committees. In addition, the language of the statute itself restricts its applicability to those contributions made to organizations which might be described as engaged in active electioneering.

You note in your letter that cases interpreting 18 U.S.C. 610 seem to limit prosecutions to situations where the contribution was made for the purpose of active electioneering. In the situation you postulate the contributions to the local non-profit organization would not inure to the benefit of any particular person seeking nomination to a Federal office and would only incidentally benefit a political party. The fact that the convention is political in nature as opposed to some other convention, *i.e.*, fraternal, legal, medical, etc., would not preclude the contribution being made for the primary purpose of bringing the political convention to the community with the reasonable expectation of financial return to the contributor. This rationale appears to be supported by the Congressional interpretation reflected in the Federal Election Campaign Act of 1971, reported out of Senate-House Conference Committee on December 14, 1971. Therefore, we find no conflict between 610 and Internal Revenue Bulletin 55-265.

Section 611 prohibits contributions from firms or individuals contracting with the United States to any political party, committee or candidate for public office or to any person for any political purpose or use. Whether a contribution made to a committee, as described in the Internal Revenue Bulletin, by a firm or individual contracting with the United States would be for a political purpose or use or for a purely commercial purpose, is, like the question of tax treatment, a question of fact which would be determined by the circumstances surrounding the contribution.

I hope this letter will be of some assistance to you.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General, Criminal Division.
By JOHN C. KENNEY,
Chief, Fraud Section.

MR. ANDERSON. Well, I heard Mr. Kleindienst respond to this question, and he did not read any of these learned decisions that you cite.

SENATOR HRUSKA. No, he did not, and his testimony will speak for itself. Any lawyer questioned on as complicated matters as the many, many that he was interrogated upon, must be a little careful in what he says.

Now, you can have your opinions about it, but again I submit that the Committee will probably have a pretty good idea of where the credibility lies with regard to whether the contribution by a corporation to support a political convention is a crime.

MR. ANDERSON. Well, I am aware that the attitude toward political contributions on the part of the politicians has been somewhat fuzzy.

SENATOR HRUSKA. It is not fuzzy at all. Conventions all over America are bought all the time by business communities, and everyone—

MR. ANDERSON. I subscribe to that.

SENATOR HRUSKA. Everyone in this room knows it. Every city in which any of the Senators of this committee come from goes out and buys conventions, and how do they do it? They subscribe to a fund

saying that the city has contracted and has agreed to award so many dollars to the convention management for convention purposes. It is up to the merchants and the people who are in that city, and who will profit by the tremendous numbers of people coming there to spend money, to make those contributions. Most of the members of this committee were in the Senate when the Anderson amendment was adopted and enacted, and they know the spirit and the objective of it, and it is well spelled out in the opinion that was subscribed to by Mr. John C. Kenney, who is in the Office of Henry Peterson, now head of the Criminal Law Section.

Mr. ANDERSON. Well, I would just add this, Senator, and I think, and I say it with all of the sincerity that I can bring to bear on this, I believe that our system of financing elections, our system of financing political campaigns is the most corrupt and the worst feature of our entire political process.

Senator HRUSKA. Well, Mr. Anderson, if we were engaged in a hearing on the proposition of what the political science of campaign funding should be, that statement would be very welcome, but, my question, of course, had to do with your corroboration or some proof that the contribution by a corporation to support a political convention is a crime.

Senator KENNEDY. Would you put that in the record, Senator?

Senator HRUSKA. Sir?

Senator KENNEDY. Would you put that in the record?

Senator HRUSKA. I have already done so. I have already done so.

Mr. ANDERSON. Well, Senator, my response would be this: That one of the biggest merger cases in all history was being settled, one of the biggest antitrust suits against ITT was being settled at the same time that discussions were going on involving a contribution to the Republican Convention. Now, if there are people in the Senate who cannot see that this is wrong, there is something wrong with their eyesight.

Senator HRUSKA. Well, now, let me ask you this: You say in the very first paragraph of your statement: "While denying this accusation that was not made, the Attorney General Designate acknowledged virtually every charge I did make." Will you tell us what charges you did make?

Mr. ANDERSON. Yes. We said that he had told a lie. We said that he had told a lie.

Senator HRUSKA. Did he acknowledge that he told a lie?

Mr. ANDERSON. Well, he came here and danced, as we said, around the mulberry bush on the word "negotiate."

Senator HRUSKA. That is not what I am talking about. I am not talking about any dancing. We are talking about acknowledging. Did he acknowledge that he lied in terms of the charge that you made?

Mr. ANDERSON. He acknowledged that everything that we said about his conversation with Mr. Felix Rohatyn had occurred. He gave us even the dates, even more details than we published. Mr. Rohatyn also testified that these occurred.

Senator HRUSKA. Very well, then. Item 1, you charged that he told a lie. What else did you charge him with?

Mr. ANDERSON. Well, that was the basic charge.

Senator HRUSKA. I know, but you said virtually every charge you did make, he acknowledged. What other charges did you make?

Mr. ANDERSON. Well, do you want me to read the column into the record?

Senator HRUSKA. No, I want the charges. I want the charges that you made, not what somebody else said, and not somebody's account of a mythical \$400,000, because there has not been any direct testimony concerning that. I do not want what somebody else said. What charges did you make? After all, we have to fasten this down to a matter of proof and evidence. What charges did you make, not what other people wrote, or what you understood, or what you expect, but what charges did you make?

Mr. ANDERSON. I am about to enlighten the Senator. (Reading:)

We have now established that Attorney General-designate Richard Kleindienst told an outright lie——

Senator HRUSKA. That is——

Mr. Anderson. (Continuing.)

about the Justice Department's sudden out-of-court settlement of the Nixon Administration's biggest antitrust case——

Senator HRUSKA. How was that established?

Mr. ANDERSON. I will go on to read:

The case involved the International Telephone and Telegraph conglomerate, which appeared on the way to a Supreme Court showdown with the Justice Department over ITT's takeover of the huge Hartford Insurance Company.

Last July, however, the case was abruptly settled. The terms, considered highly favorable to ITT, were announced at the same time——

Senator HRUSKA. Well, Mr. Anderson, with all due respect to you, the answer is not responsive, and I will refer to my question: What other charges did you make besides saying that he told a lie?

Mr. ANDERSON. I will give you the whole thing. I am giving you word by word.

Senator KENNEDY. Can the witness answer the question, Mr. Chairman? Can the witness be permitted to answer the question, please?

Senator HRUSKA. He can answer questions if he is responsive, but I do——

Senator KENNEDY. We have heard that around here a lot in the last 4 days.

Senator HRUSKA. I do not want an unresponsive answer. What other charge did you make besides saying that he lied?

Mr. ANDERSON. Well, I will go on.

The terms, considered highly favorable to ITT, were announced at the same time ITT secretly pledged up to \$400,000——

Senator HRUSKA. If you will——

Mr. ANDERSON. (Continuing.)

to support the Republican convention in San Diego this year. A check for \$100,000 has already been written.

Senator HRUSKA. Now——

Mr. ANDERSON. "Denying any connection"——

Senator HRUSKA. Just a minute, Mr. Witness.

The CHAIRMAN. Let him answer.

Senator HRUSKA. Well, Mr. Chairman, he is not responsive. When he answered my question as to: What charge did you make against, against Mr. Kleindienst, he said the check for \$100,000 has already been written.

Is that a charge that you make against Mr. Kleindienst?

Mr. ANDERSON. Senator, you asked for the charge. It is contained ——

Senator HRUSKA. Against Mr. Kleindienst?

Mr. ANDERSON. It is contained in the column, and I am reading the column to you. I want to be sure that you get every part of it.

Senator HRUSKA. I beg to differ with you. You are making a statement that has nothing to do with the charges and the enumeration of the charges you made against Mr. Kleindienst. When you say that a check for \$100,000 was already written, is that a charge that you make against Mr. Kleindienst?

Mr. ANDERSON. Well, the statement speaks for itself. I want to be sure that you get it in context. I will be delighted to continue.

Senator HRUSKA. Well, you are not responsive if you continue reading from something that is alien to what you personally have charged against Mr. Kleindienst.

Mr. ANDERSON. Well, I am backing it up. I am telling you what we wrote.

Senator HRUSKA. My time is up, and we will have to have the pleasure of resuming this delightful colloquy after a while.

Senator HART. I think I should address this question to Mr. Hume. As I understand it Mr. Hume was present, called on Mrs. Beard at her home sometime last week?

Mr. HUME. I will give you the dates exactly, Senator, if you would like the chronology of how this developed. Would that be helpful?

Senator HART. Yes.

Mr. HUME. Well, the first time I saw Mrs. Beard was on Wednesday, the 23d of February. We had come into possession of this document, the now famous Beard memorandum, and it was the consensus of everyone in the office that although we have confidence in our sources, that we could do nothing with this piece of paper until it had been said to be authentic by the person who wrote it.

Therefore, I telephoned Mrs. Beard. Failing to reach her on Tuesday, the 22d, I called her back on the 23d, Wednesday morning, and I told her secretary that I had a piece of paper that appeared to be from ITT's files involving her, and I thought it best to confer with her about it before we went any further.

She called me back shortly. We talked briefly, and she asked me to come over to her office, which is only a couple of blocks from where I work, and I went over there about noon that day and showed her the document, which is the original of this memorandum.

And she was quite flustered about it, but she did acknowledge this was authentic, and she did this in the presence of two ITT public relations officials, Bernie Goodrich and Jack Horner. The best thing she said in terms of authenticating this document was that the initial "D" beside her typed name on the memo was "her own little 'd'," as she put it.

At that time it seemed to me a somewhat unfavorable set of circumstances for a candid interview. I was in the conference room with these two other officials present. She was quite flustered and nervous, seemed as if she really did not want to discuss it in detail at that time, so we agreed that we would talk about it later on, after she had had a chance to check her files, and to check with the people to get the circumstances surrounding the document straight.

I got back to her the next day. I had to make an overnight trip, but I got back earlier than I expected the next day, called her office. She did not call me back right away, but called my home—no, I am sorry, called my office after I had left. I had to go to a Cub Scout dinner

with my son that night, and I did not get her message until I got home at 9 p.m., and one of my other associates in the office called and said that Mrs. Beard had called, and that she was quite upset and wanted to talk to me, and, indeed, to tell me the truth about this whole matter.

And so at that time I contacted her at her home by telephone at the number that she had left for me, and I went right out to see her, and that is when this long interview took place.

Senator HART. Did you hear or have you read the testimony given by Dr. Liszka?

Mr. HUME. Yes. Yes, I was here for that.

Senator HART. Was he present for a portion or all of the visit you paid to Mrs. Beard?

Mr. HUME. Yes. He was present at the very end. He came in at sort of the tail end of our conversation, and stood there briefly while we talked, and he remained after I left.

Senator HART. He was there for a portion of the interview only?

Mr. HUME. Yes, that is right, Senator.

Senator HART. In his testimony he made certain explanations of what he had heard Mrs. Beard say. Having heard Dr. Liszka, do you have any comment on what his testimony was to us with respect to the accuracy?

Mr. HUME. Well, he emphasized that she had denied the implication in the memorandum that there was a tradeoff, cash commitment for the settling of the cases. That is true. She did emphasize that repeatedly, and we emphasized it in the column that we wrote on the subject.

He had some comments about her physical condition, and relative to other times he had seen her, and I really am not in a position to testify about that because I simply have not—I have only seen her twice, and I cannot match his experience as far as being with her, in her presence.

Senator HART. Dr. Liszka was asked by Senator Kennedy if she, meaning Mrs. Beard, had mentioned the name of Mr. Geneen during any of this conversation, and Dr. Liszka answered yes.

Senator KENNEDY. What did she say about him?

Dr. LISZKA. Well, Mr. Hume asked Mrs. Beard whether Mr. Geneen has known anything about—whether this approach of the Attorney General—I think I remember correctly. You know, don't forget, I am not an FITT man and I am not familiar with their business. If I remember correctly, that is what happened. Mr. Hume asked her what did Mr. Geneen know about San Diego and the fact that you approached the Attorney General, and she said no.

Senator KENNEDY. How did she mention Mr. Geneen in her conversation from Mr. Gerrity's office?

Dr. LISZKA. No; she just simply stated 'I am in Mr. Gerrity's office,' and you know, they can find me there. She did not indicate whether or not she had any conversation with him.

Senator HART. Do you have any comment with respect to the answers I have just read?

Mr. HUME. Well, Senator, there were two basic points that Mrs. Beard stressed, and stressed again in my conversation with her. No. 1 was that the implication of the tradeoff was inaccurate; and No. 2, that Harold Geneen, of whom she spoke with great admiration and affection, repeatedly, did not know about this approach she had made to the Attorney General.

Senator HART. She did emphasize that?

Mr. HUME. She did emphasize that, that is correct.

Senator HART. I have no further questions, and I thank you.

The CHAIRMAN. Mr. Anderson, you say Webster defines "negotiate" as "to confer, to bargain, to discuss with a view of reaching agreement." Now, the testimony shows that Mr. Rohatyn called on Mr. Kleindienst, told him what his problem was, and Kleindienst called the head of the Antitrust Division, Judge McLaren, to make an appointment for Mr. McLaren and his staff to hear the discussion. Now, Mr. Kleindienst attended that hearing. Where was there any negotiation to reach a settlement that the Deputy Attorney General, Mr. Kleindienst, engaged in?

Mr. ANDERSON. Well, the appointment certainly was part of handling the antitrust case, and then there were three, if I recall the testimony correctly, there were three private meetings between Mr. Rohatyn and Mr. Kleindienst when the decision, the favorable decision, the glad tidings were finally reached, and it was Mr. Kleindienst who called Mr. Rohatyn with the news.

The CHAIRMAN. Where was there negotiation to reach a settlement on the part of Mr. Kleindienst?

Mr. ANDERSON. Well, he discussed the case, he listened to the terms that the ITT sought. The precise substance of these private conversations, of course, I do not know, and I am not at all sure they have been testified to candidly here. But, there were certainly a series of meetings between the two men, which is what we had reported in the column.

The CHAIRMAN. That is admitted, but negotiation the purpose of which is to settle, now, there is no proof in this record.

Mr. ANDERSON. Well, I think it was Mr. Kleindienst's own testimony that these visits with Mr. Rohatyn set in motion, I think that is the exact quote, set in motion the series of events which did lead to the settlement.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Mr. Hume, you have mentioned in your response to Senator Hart, as I understand, that the second meeting was at her house on Thursday evening?

Mr. HUME. Yes, that is right.

Senator KENNEDY. Could you go through, in as much detail as possible, exactly what happened at that time?

Mr. HUME. Yes. As I say, I spoke to her from my home, returning her call which she had made, returning mine.

Senator KENNEDY. Could you pick up the mike and speak just a little louder? Just lift it up and speak right in.

Mr. HUME. I went out to her house and I got there about 10 o'clock, and the atmosphere—she had her secretary, I believe, a Beverley, and I do not recall the last name, and a friend whose first name was Walter, and her son, who she identified by his name—and the atmosphere in the house was a little like the atmosphere in a home where you might feel that there was a death in the family.

There was a tremendous feeling of crisis and of concern, and Mrs. Beard and I went into the kitchen, and we sat at the kitchen counter on stools and we began to talk.

And for about the first hour she sort of filled me in on the background of her life, and gave me a very long discussion, really a biography of herself, which was really not what I was there to discuss, but I was disposed to listen to it because I felt that it was the polite thing to do, and also the wise thing to do, if a feeling of communication

could be established between us, so that she might tell me what she could tell me, and feel she could tell me the truth.

And after a long discussion—now I made, Senator, after I left the meeting with Mrs. Beard that night I went home, I did not take notes during that meeting because I felt that it would be unwise to produce a reporter's notebook when I was trying to discuss this on a relatively intimate basis, but I did go home and I wrote a long memorandum to myself on the typewriter, as fast as I could type, so as to try to remember everything that was said. It was a very crude document, and certainly it was not intended to be the basis of an investigation by this committee, but I can refer to it, if you think that would be helpful. I do have it with me.

Senator KENNEDY. Yes; I wish you would.

Mr. HUME. At first we just talked generally about how unfortunate it was that she had been with the two ITT pressmen during our meeting the day before. She went into a long discussion about her life and the difficult times she had, which ended with her telling me how she had landed a job with ITT in Washington in the early 1960's. She said she has five children and so forth.

She looked weary, as if she had been crying, and she did several times during our conversation, because she was so upset, and I felt it would be unwise to produce the notebook for the discussion.

We eventually got onto the subject at hand, the memo, she repeatedly promised to tell me the whole truth, and always kept asking me if I wanted to destroy her in quotes. She told me one of her assignments was to drum up business for the Sheraton Hotels of ITT. She said she first thought of having the GOP Convention in San Diego during a conversation that she had with Ed Reinecke, the California Lieutenant Governor in about January of last year. She said that he considered it a possibility and mentioned it to her.

Now I want to add here that she indicated that she and Mr. Reinecke were friends, and that they had had several meetings, and Mr. Reinecke made visits to Washington on several occasions and there were several conversations, and whether they were in person or on the phone, I do not know, but she was in frequent contact with him on this, and they cooperated in an effort to swing the GOP Convention to San Diego and, in fact, it was during this conversation I had with her that evening that she told me that Mr. Reinecke had visited Attorney General Mitchell sometime during the work that she was doing on San Diego, and asked him what he thought about it, and that is how I knew to call Mr. Gillenwaters, or, that is, I called Mr. Reinecke and I ended up talking to Gillenwaters to find out when that meeting had been.

Now, she gave me an account. Now, this is getting into her account of what someone said that someone said, but I will read it for what it is worth. She said that after Reinecke had met with the Attorney General on this subject, she said that the Attorney General had been told that there was a \$400,000 commitment from the Sheraton ITT Co.

Senator GURNEY. Did she mention when the date was?

Mr. HUME. No, Senator Gurney, she did not, and I sought to establish later when it was. And she said that she could not be sure, but that she thought it might have been in July. She was quite eager to persuade me, it seemed, that the meeting had occurred, I think, after the settlement negotiations were well along their way.

Senator GURNEY. Excuse me, Senator.

Mr. HUME. In any case, she said that Mitchell had been told by Mr. Reinecke that there was a \$400,000 commitment from the ITT Sheraton people to back the convention in San Diego. She said Reinecke reported to Mitchell that the commitment was made by Dita Beard. She quoted Reinecke as quoting the Attorney General as replying "hummmph" or some words to that effect, indicating some negative feeling about her, or wonderment about how she could come up with such a commitment.

Anyway, she indicated that after a lot of spadework she had gone out to San Diego, and she checked high and low to see how much space there was in the hotels, to check with the officials that were helping to build the new Sheraton Hotel that was in progress out there and to find out if it could be ready in time to really determine if it was feasible to hold the convention there, and all of this she went about on her own, basically, and that finally in May, when the ITT held its annual meeting in San Diego, there was a dinner at the Half Moon Inn in connection with the annual meeting, and California Congressman Bob Wilson was there. And I gathered from a conversation that she and Bob Wilson were friends, that they had seen each other a lot, and they were close.

Bob Wilson, Mr. Harold Geneen were there, according to Mrs. Beard, and a man named, identified as Bud James, who is the head of the Sheraton Division there in San Diego, and she was there. At this point she had pretty well determined that this was a pretty strong possibility of getting the convention there, and she told Mr. Geneen about it.

She said, well, Hal, I want you to know we think we can do this, and she said that Congressman Wilson, who had not really been in on her spade work was astonished with this. Of course, he is from San Diego, and he got a little angry that he had not been let in on it, but finally, it was sort of a good news thing, and she said Mr. Geneen's response was, well, we will support it, we will underwrite it, and this is what she said. At the time they were hoping to have the convention there with ITT Sheraton support and this was the time it really became pretty definite that it would, the company would back it up.

And now she talked, we discussed her memo, and she explained the reason she had written the memo was that she had felt that her friend, Mr. Merriam, who is her boss, I guess, technically, and the manager of the Washington office, had committed an indiscretion by letting the word slip out at a lower level of the White House than she had desired, and she felt that it was undesirable, about this commitment, which remained secret, as you know, until well after the convention decision was made.

And she said that she wrote the memo in an effort really to impress upon him the need for discretion in this matter, and furthermore she was trying to resolve the confusion that had developed about whether or not it was going to be in cash, this commitment, or in services, that it was apparently the cause of Mr. Merriam asking some questions and then there being a call to the White House, or from the White House, which really triggered this memorandum.

So, finally now we get into the subject of John Mitchell as we went through the memo. She said that the public relations people she had talked to with ITT had several suggestions about what she might do.

One was that she could tell me that she made the whole thing up, and the business about Mitchell was really not true, and that she made it up.

And she said that she just could not do it, that she just would not resort to that, because that would have been false, and she just could not have done that.

She said that they also had a suggestion that it might be a good idea to get out of town and stop talking to me, apparently, as an alternative to telling me the story that it was all fake or false.

She said, when I kept pressing her about it, that she had called Louie Nunn after I had brought the memo over to see what conversation with Louis she might have been referring to, and she said she really—that he really did not remember very well, he just said he could not imagine what the conversations were.

I kept pressing her at this point and she had said, she kept saying, If I tell you the truth, will you destroy me? She was getting very emotional now, and I tried gently to continue to press.

I asked her if there was a way that she could tell me the facts and that I could keep her name out of it, Senator Kennedy, and I tried to stress to her that our real interest was not in the document, that if we could get to the bottom of this thing, and get the real truth of the matter, and if the document proved to be false, that we were willing to abandon it.

Well, she was, she was increasingly upset. I noticed—I said, now, is there a way that you can tell me the facts of this and that we can keep your name out of it, and she shook her head and she was getting very upset then, and quite emotional, and I had the feeling that I was getting close to the nub of the matter.

I recited at this point my surmise of what had happened, my conclusion from reading the document, and I had a theory and I will explain what it was.

The first person that I called after I got the document confirmed by Mrs. Beard was Judge McLaren. I had always had a lot of respect for him and I figured that the guy would give me a straight story.

He said that during the drafting of the Justice Department settlement proposal, and the negotiations that followed with the ITT lawyers, he said he felt no pressure whatever.

Now, evidently I failed naively to ask him what was probably a more important question, and that was, when was the decision made to go in and settle the case rather than stay in there and try it, and under what circumstances, and who was involved.

So, I want to note for the record that I did subsequently try to get back to the judge about that, and put that question to him, and I gave it to a member of his staff and asked that it be put to him, and if he would be available to call, and I left both my home and business number. And he never called me back, so I was not enlightened on that point.

Anyway, I gave Mrs. Beard the theory. I said, Now, it would seem to me that if there was some kind of a fix in this case, that it must have occurred while there was still a real danger of this case being fought through the courts, the *Hartford* case going to trial and the other cases going up on appeal, all the way up to the Supreme Court.

And she gave me a startled look. She looked up, and she had not been looking at me, and she gave me a very startled glance, which made me think perhaps I had hit on something.

So, I pressed her still further.

The CHAIRMAN. The time is up.

Senator KENNEDY. Mr. Chairman, I would like to see if we could let the witness finish, and then give accordingly the same time to the other side. I would like to let him finish, and whatever time he goes over, give it to the other side, if it is agreeable with my colleagues.

Senator BURDICK. I will yield my time.

The CHAIRMAN. Is it agreeable?

Senator KENNEDY. Just to let him finish, and what additional time he takes, yield to that side.

Senator ERVIN. Do you have any idea how long it is going to take him to finish? Because I have to go to the floor.

Mr. HUME. I can conclude this one particular thought and leave the rest for later, if that would be appropriate.

Senator KENNEDY. How long would it take you to give the complete conversation?

Mr. HUME. Well, there is a lot of it that is recorded in this memo, but there are other subjects that may come up in my memory, so it might take a while to get the whole thing on the record. So perhaps it would be, perhaps it would be well to let me finish this one aspect of it, and then we can cover the rest at a later time.

Senator BAYH. Mr. Chairman, if the Senator would yield, it seems to me that Mrs. Beard is important enough, and what she said is important enough, and here is a man who is one of the few people who had actually had a chance to talk to her personally since this came up. I think it would be in all of our best interests to get all of this out on the table so that we will know what is going on, so that both sides will have a more intelligent opportunity to ask questions dealing with what she may or may not have said.

The CHAIRMAN. Yes; but you were not in town, and the committee has adopted a 10-minute rule.

Senator BAYH. Mr. Chairman, I was in town. That was adopted earlier, and it has been followed to some extent. I think it is a good rule, but if it is in the best interest of all of us here to waive that rule to get the evidence of this important witness out on the table—I mean, if somebody on the committee does not want to do it, then, of course, the committee does not have to.

Senator HRUSKA. Mr. Chairman, I would like to suggest that when I had tried the same thing, that I had objections from the man who is now interrogating the witness, and I heard no plea on behalf of the Senator from Nebraska. I do not know that there is a plea at this time.

Senator HART. Does it not make sense——

Senator BAYH. The Senator from Indiana was not here at that time.

Senator KENNEDY. Mr. Chairman, Mr. Hume has not made any formal statement here this morning. As a matter of fact, I think right after Mr. Anderson spoke he was asked whether he wanted to make a statement.

I think the committee ought to consider this to be the basis of the statement, and I would urge my colleagues that he ought to be given time. If the Republicans want to charge that against the time of the Democrats, I would hope that they would be willing to accept it.

Senator ERVIN. Mr. Chairman, I have amendments on the floor to offer, and——

Senator KENNEDY. You know we are not going to vote on that.

Senator ERVIN. No. But I have to go over, and I have questions that I want to put to Mr. Anderson. I agree that if it were in a court of law, it would be well to let the witness continue his statement and make it complete. But, unfortunately, there are some of us who have some other things to do. I cannot stay here all of the time and I do think that my questions are important.

Senator FONG. I think it is my turn now, Mr. Chairman.

Senator ERVIN. The witness says that it will take him a great deal of time to detail the rest of the transaction.

Senator FONG. Mr. Chairman, I think we proceeded under the rule that each member was supposed to ask questions of the witness for 10 minutes, and then we would go to the next individual. I think it is my time now, and I ask for it.

Senator BAYH. Would the Senator yield long enough for me to make a request of the committee, for my own benefit, and I hope for all of our benefits: At least we may ask unanimous consent that the continuation of the witness' testimony run consistently, so that it not be divided into separate parts.

Senator FONG. Well, if we are going to have a 10-minute rule, I don't see how we can do it.

Senator HRUSKA. How can we do it?

Senator BAYH. I mean we can just list it in one series after the other instead of having it divided in about 10 different parts.

Senator HRUSKA. That would involve an editing of the record——

Senator BAYH. That seems to be a reasonable request.

Senator KENNEDY. There is a great deal said about delaying the hearing, and what we are trying to do is to expedite it. At least I would think——

Senator ERVIN. I am not sure whether you are trying to expedite them or monopolize them, and I would not have any objection if I could stay here all day but I just cannot.

The CHAIRMAN. Mr. Hume, do you have any objection to placing that memorandum in the record?

Mr. HUME. Well, Senator, it has got some four-letter words in it, which I do not know that you would feel were appropriate, and also——

The CHAIRMAN. Well, I have had a request, now.

Mr. HUME. Well, it is——

The CHAIRMAN. From the committee to ask you to do this.

Mr. HUME. Well, I would like to consider this document as my reporter's notes, and because it is, was made from my own personal memory, for my own personal use, not even for the communication really to anyone other than myself, that I would like for it to be regarded as such, and I would prefer, if the chairman would be so kind, to——

The CHAIRMAN. Well, it is not the chairman.

Senator COOK. Well, Mr. Chairman, I am going to request that it be made a part of the record, and that it be submitted when he is through to the stenographer to be made a part of the permanent record.

Mr. ANDERSON. This is part of our, this is part of our newsman's files, and we will refuse to make it available for the record, unless Mr. Hume changes his mind.

Senator COOK Then I will take that up with the entire Senate after we discuss it in the committee, Mr. Chairman, because the gentleman was put under oath, he is referring to it, he is utilizing it for his benefit, to refresh his own memory, and again I request it.

I request the chairman to rule whether that document should be made a part of the record.

The CHAIRMAN. The chairman rules that that is a matter for the committee.

Senator BAYH. May I just ask the Senator from Kentucky if, indeed, we do not have a rather significant constitutional question here? A newsman is protected under the first amendment and can protect this document. But he is giving the substance of it, and interpreting it from his recollection, and according to his memory, so are we not in effect getting the document and still protecting his constitutional rights?

Senator COOK. The Senator may be right, but I am not sure I can presume that all of these facts that he has presented are true. He has read from it periodically, and then he has deviated from it and said that he has had this further conversation with the Lieutenant Governor of California, and Mr. Gillenwaters, so I am not sure that what the Senator says can be assumed by all of the members of the committee.

I am going to request that it be made a part of the record.

Senator BAYH. He is testifying under oath, so if he is not telling the truth, it would be perjury.

Senator COOK. I might say to you, of all of these gentlemen who were testifying all week long, when the Senator was not here, when requests were made—and I do not consider this as a Republican versus Democrats, as the Senator from Massachusetts said, because I would be perfectly willing to let the witness continue, and I would say let that be made a part of the record—when witnesses were asked before, would you make this a part of the record, or that a part of the record, the answer to all of us from the witnesses has been “certainly.” So, I can only say to—

Senator KENNEDY. That is not true.

Senator COOK. The record is in front of him, and it is there right now, and I am going to ask that it be made a part of the record, in its present form.

Senator GURNEY. Mr. Chairman, may I—

Senator KENNEDY. Isn't this a matter for the executive session, in the words of the chairman, before?

Senator GURNEY. Mr. Chairman?

The CHAIRMAN. Senator.

Senator GURNEY. Mr. Chairman, we have not asked Mr. Hume yet. Mr. Anderson said that he would not produce it, but Mr. Hume has only said that he would prefer not to. Could we ask if he would place it in the record?

Mr. HUME. I would prefer not to place it in the record, and I will not.

The CHAIRMAN. Senator Fong.

Senator FONG. Mr. Anderson, we are here to find out whether Mr. Kleindienst is fit to be Attorney General, and I am not here to go far afield. So, I am going to ask you a very few pertinent questions dealing only with Mr. Kleindienst as it affects his qualifications to be Attorney General.

Now, you stated that Mr. Kleindienst lied. Did you ever call Mr. Kleindienst a liar?

Mr. ANDERSON. Yes; in this testimony just a little while ago, and before that in the column.

Senator FONG. Now, why do you call him a liar?

Mr. ANDERSON. Because he told a lie.

Senator FONG. What was that lie?

Mr. ANDERSON. Senator, there is a line that a lie is a poor substitute for the truth, but I know no other. When Mr. Kleindienst said this case had been handled exclusively by the Justice Department's Antitrust Division, he did not tell the truth. Now, I considered it, therefore, a lie.

Senator FONG. But, this is not what he said, Mr. Jack Anderson. Quoting from his letter to Hon. Larry F. O'Brien, and also quoting from your column, he stated as follows:

"The settlement," and I repeat, "the settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren."

Now, you said he lied because he was handling the case——

Mr. ANDERSON. And negotiating it.

Senator FONG. But he said——

Mr. ANDERSON. Exclusively.

Senator FONG. Now that I have read you the sentence which says the settlement, not the case but the settlement between the Department of Justice and the ITT was handled and negotiated exclusively by Assistant Attorney General, do you still say he is lying?

Mr. ANDERSON. Oh, there is no question about it, and the distress is that grown men cannot understand a lie when it is hurled right in their faces.

Senator FONG. Well, of course, you understand the English language?

Mr. ANDERSON. Yes.

Senator FONG. And you write very well. Does the word "settlement" mean anything to you?

Mr. ANDERSON. Yes. Mr. Kleindienst, if I may remind the Senator, and he may not have been here at the time, but if I may remind him, Mr. Kleindienst, himself, said that his meeting with Rohatyn set in motion, set in motion the chain of events that led to the settlement.

Senator FONG. Yes; but it was not the settlement he was engaged in, was it? Mr. McLaren handled the settlement. Then, let me read the second page which he wrote to——

Mr. ANDERSON. I do not think the public has any doubts about what occurred. I do not think the Senate does. Now, you can call it what you want, then; we will call it what we want, but everybody knows they had a series of meetings. Everybody knows that Mr. Kleindienst certainly did his best to give the opposite impression.

He did his best in this letter that he wrote to give the impression that he had nothing to do with this, and he had a great deal to do with it. He played a backstage role. We all know that.

Senator FONG. No; he did not give me that impression. Reading the letter, he gave the impression that the settlement, and it is very clear when he stated "the settlement," he did not say the "case," he said "the settlement" was handled exclusively by Mr. McLaren.

Now, let me read you the second part of this letter, page 2. He says:

Prior to the final conclusion of the settlement negotiations, and the effectuation of the settlement agreement between the Department of Justice and ITT, Mr. McLaren made his final recommendations in the matter to me, which I concurred in.

Now, you seem to give the impression that he is trying to say that he did not know anything about it, yet this page 2 gives the impression that he knew something about it. He concurred in that settlement.

Now, there is a difference between the word "case" and the word "settlement."

Mr. ANDERSON. Well, the settlement discussions were well underway. Senator, as you know, before Rohatyn came to see Mr. Kleindienst. His appearance in the case led to the events that changed Judge McLaren's mind. Up to that point Judge McLaren had made repeated public statements that he wanted to see this case go through the Supreme Court.

It was after he heard from Mr. Rohatyn, it was after his boss said Mr. Rohatyn—sent Mr. Rohatyn down to see him, it was after that that McLaren had a change of heart, a change of mind.

And I say to you, and I think the public understands this, and I really think you understand it, Senator, I think that there is no misunderstanding about what went on here. I think that it is——

Senator FONG. Well, what I want you to understand——

Mr. ANDERSON. I think it is clear. I think it is clear.

Senator FONG. You try to play with words.

Mr. ANDERSON. He played a backstage role in this thing.

Senator FONG. And you are trying to play with words.

Mr. ANDERSON. I am trying to play with words?

Senator FONG. Yes; you are trying to play with words.

Mr. ANDERSON. First, the witnesses who sat here together, the ITT man is holding hands with the Justice Department man, and they sat here, and they played with words, the word "negotiate" for 3 days, and now you are bringing up a new word, "settlement." Well, we can play with that for 3 days.

Senator FONG. No, no; another——

Senator Cook. Would the witness please answer the question if one is propounded?

Senator FONG. Let me give you another word. You used the word "secret." The meetings when he met with Mr. Rohatyn, you said these were secret meetings. Obviously if Mr. Kleindienst were holding secret talks with Rohatyn on the case, it could not have been handled and negotiated exclusively.

Now, let me ask you what do you mean by "secret"?

Mr. ANDERSON. I mean not made a matter of public record. There was no press release on it.

Senator FONG. If you came into my office and talked to me, would that be a secret meeting?

Mr. ANDERSON. If I came to your office to discuss a settlement of an antitrust case, and you were the head of the Justice Department, and we talked in private, it would be a secret meeting; yes.

Senator FONG. Will you please answer the question?

Mr. ANDERSON. I just did.

Senator FONG. If you came to my office and said, "Senator Fong, I want to talk to you," and I said, "Come in," and you came in, or my secretary told me that you were coming in, and you would come in at 8 o'clock to see me on a subject matter which you wanted to talk to me about, and I said, "Come in," is that a secret meeting?

Mr. ANDERSON. If we were to discuss as sensitive a matter as this, and you were in a position to settle it, yes, of course.

Senator FONG. Then when it is a sensitive matter, then it becomes secret? If it was not a sensitive matter, then it is not secret; is that right?

Mr. ANDERSON. Senator, these series of meetings were not put in the public record.

Senator FONG. Does that make them "secret" meetings?

Mr. ANDERSON. I spoke to the Deputy Attorney General and asked him, since he says that these meetings were open, whether he would now make public the list of meetings he held, and he said he would not. So, when he will not make public, he, a public official, who has his salary paid by the taxpayers, refuses to make public the people that he sees, the people that he discusses these matters with, then I say that it is secret, and I think I used the word accurately.

Senator FONG. Are you saying that every time I see anyone that I should put in the paper that I saw that person? I see 10, 15 people a day. You mean to tell me that I should make public whom I see every day?

Mr. ANDERSON. I think it would be a good idea, yes. If you are representing the people of Hawaii, I think it would be a very good idea.

Senator FONG. Would you do the same thing?

Mr. ANDERSON. I was not elected, but as a matter of fact, I will if you will.

Senator FONG. Well, isn't that a play on words, the word "secret" when you mean "private."

Mr. ANDERSON. I think that I used it accurately, Senator. I think everybody here knows that I used it accurately.

Senator FONG. And you still believe that when Mr. Rohatyn went down to talk to Mr. Kleindienst—

Mr. ANDERSON. I think that he was being most secretive. I think he was. I think the last thing in the world he wanted to happen was for me to publish the results, the conversations or even the fact that a conversation had taken place. I think that Mr. Rohatyn and Mr. Kleindienst did not want to see in the public press any reference whatsoever to their meetings, and we still do not know precisely what was said in all of their meetings.

Senator FONG. I certainly—

Mr. ANDERSON. And I think, therefore, Senator, that the continuing meetings that were held privately between Mr. Kleindienst and Mr. Rohatyn are still secret.

Senator FONG. You agree that they were private?

Mr. ANDERSON. Well, as I said, I would like to know what else they said when they held this series of private meetings or secret meetings. I say they are still secret.

Senator FONG. Then, to you all private meetings are secret?

Mr. ANDERSON. Well, I think—I do not see any point in belaboring the semantics. Call it what you will, Senator.

Senator FONG. All right. Then, another word that you used here in your column, "Kleindienst's duplicity is further evidence that the administration"—now, what is this duplicity?

Mr. ANDERSON. Well, we have gone into that, but I think probably it is good to go into it again.

Senator COOK. The witnesses yesterday were asked questions four, five, and six times, Mr. Chairman.

Mr. ANDERSON. Well, I am happy to stay, Senator Cook, and I will stay as long as you will.

Senator COOK. Good.

Mr. ANDERSON. OK. Richard Kleindienst, in a letter to the National Democratic Chairman, Larry O'Brien, gave the very positive impression that he had nothing to do with these negotiations. He said the settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard McLaren.

Well, that was not the case. There was a series of meetings that Kleindienst had a part in. He was getting mail from an ITT lawyer. He was very involved in the case. He was playing a backstage role in the case. He set in motion the events that led to the settlement.

Even the ITT man, Felix Rohatyn, when he spoke to him, referred to his meetings with Kleindienst as negotiations, and so when this letter was written by Mr. Kleindienst, he was guilty of duplicity.

Senator FONG. And you still feel that there is no difference between the use of the word "settlement" and the word "case" when he said the "settlement," and you will note he used the word "settlement" between the Department of Justice and ITT was handled and negotiated exclusively—

Mr. ANDERSON. And the purpose of talks, Senator, the purpose of Mr. Rohatyn's visits, the only reason that he went to see Mr. Kleindienst, the only reason that this was all worked out was to arrange a settlement. I think that is clear in the record, is it not?

Senator FONG. No; it is not. The evidence before us is that there were no negotiations. Of course, your definition of negotiation, your definition of settlement, your definition of secret, is a little hazy to me.

Mr. ANDERSON. Well, Senator, what do you think that Mr. Rohatyn and Mr. Kleindienst spoke about?

Senator FONG. I am asking you.

Mr. ANDERSON. He kept coming back; he came back to see him three times. Were they discussing the weather?

Senator FONG. He came back to—

Mr. ANDERSON. Or to seek a better settlement?

Senator FONG. No; he came back and said that McLaren was too harsh on them.

Mr. ANDERSON. And that he wanted a better settlement.

Senator FONG. And Kleindienst said that he would not do anything about it, and he did not do anything about it. He did not even see McLaren about it. He came back there to tell Kleindienst that he was not getting a fair deal, that he had a tough time dealing with McLaren.

Mr. ANDERSON. Senator, all I know is that McLaren made public statements saying that he was going to go to court, and he did not go to court.

Senator FONG. Now, your case against Mr. Kleindienst is that he did not tell the truth when he wrote this letter to Mr. O'Brien, which

you and I have differed as to what it meant. I understand that your case against Mr. Kleindienst is that he knew that \$400,000 was promised before the settlement.

Mr. ANDERSON. No. No.

Senator FONG. You never made such a statement?

Mr. ANDERSON. No, we never made such a charge.

Senator FONG. In your column you said \$100,000 had already been given.

Mr. ANDERSON. Yes; a check for that.

Senator FONG. Did you have proof of that?

Mr. ANDERSON. We got that information from the Convention Bureau. They said that they had received a check. You can get direct—you talk to them out there and you want to tell them exactly what the Convention Bureau said?

Mr. HUME. Senator Fong, the information in that regard came from Leon Parma of San Diego, who told me that a check had been sent by ITT and was on deposit for the Convention and Visitors Bureau, in cash, and he told me, moreover, that this check would not be spent directly on any services for the convention, that if it was to be used, it would go right into the Republican Party's Convention Account.

Senator FONG. Who said that?

Mr. HUME. Leon Parma.

Senator FONG. Who is he?

Mr. HUME. He is a San Diego Republican who is involved deeply in the convention arrangements, and I think he is, was delegated by the, perhaps, city council or the local party—I am a little hazy on it but I can check back and get that for you. But he is deeply involved in the convention arrangements, sir, and he confirmed for me that this check had been written. And I believe that the check had been photographed and published on the front pages of some newspapers, so that it really is a matter of fairly clear record on this.

Senator FONG. Oh. So, there is only \$100,000 involved, not the \$400,000.

Mr. HUME. That is right. Now, we have tried to stress throughout this matter that the commitment was for up to \$400,000. The hope has been that local sources would provide enough money so that ITT Sheraton would not have to put up all of that money.

But, they would stand in, as Mr. Gillenwaters described it to me, for that amount, and would make available that amount if it were necessary, if the local sources did not come through, and so everyone I have talked to on this, who has pretty well confirmed it, that that is how it came about, and I do not think there is too much doubt on that question.

Senator FONG. Thank you.

The CHAIRMAN. Sam.

Senator ERVIN. May I ask, I understand that my good friend—

Senator BAYH. I ask that our friend from North Carolina be permitted to go now because he has a responsibility on the floor. Mr. Chairman.

Senator ERVIN. Mr. Anderson, I think I understand very clearly the charge you made against Mr. Kleindienst, and that charge, as I understand it, is that he made a false statement when he said he did not participate in the negotiations leading to the settlement of the Hartford case.

Mr. ANDERSON. That is well put. Thank you.

Senator ERVIN. Now, I think I am relatively free from emotion in this matter. I have spent 15 years of my life judging my fellow travelers to the tomb, and I think I have acquired some capacity to judge matters with what Edmund Burke called the cold neutrality of the impartial judge.

Now, I agree with you in your observations that the important thing here is the question of whether this committee should recommend to the Senate the confirmation or the nomination of Mr. Kleindienst to be Attorney General. The evidence in this case, as I understand, and in this investigation thus far, indicates that Mr. John Mitchell had disqualified himself to perform the function which the law imposes upon the Attorney General in an antitrust case to approve any settlement that might be made, and that that obligation had been transferred to Mr. Kleindienst, who stated that he was not an expert in antitrust law.

And I would have to say that if that be true, that in one respect Mr. Kleindienst and myself are in the same boat, the boat of ignorance, because I do not understand the antitrust laws much, either.

Now, the evidence shows that Judge McLaren, as head of the Antitrust Division, had been insistent that there should be no settlement of the *Hartford* case unless there was a decree of the court carrying out the settlement, which required the divestiture by ITT of Hartford.

The evidence before us is to the effect that Mr. Rohatyn asked for an appointment with the Deputy Attorney General and received such an appointment. The committee is dependent upon the testimony of Mr. Kleindienst and the testimony of Mr. Rohatyn as to what occurred at that meeting.

According to the testimony of both of these witnesses, as I recall it, Mr. Rohatyn sought this interview with Mr. Kleindienst because he felt that ITT was being very harshly dealt with by Mr. McLaren, in that Mr. McLaren was insistent on a divestiture of Hartford.

So, Mr. Rohatyn testified, and so did Mr. Kleindienst that in his conversation that Mr. Rohatyn stated that the divestiture of Hartford would impose severe economic hardship and losses upon the investors in ITT, and cause some repercussions on the financial market.

And Mr. Kleindienst testified that he told Mr. Rohatyn that Mr. McLaren was handling this matter, that he thought this was a matter which Mr. McLaren should consider, and that thereupon he contacted Mr. McLaren and suggested that he have an interview with the representatives of ITT on this point.

He says that up to that time he had gone no further than ask the head of the Antitrust Division to investigate what appeared to be a new matter called to his attention.

Up to that point I am unable to find anything from their testimony, which is all we have, that would show there was any negotiations looking to a settlement.

The testimony further shows that this hearing was held, that it was attended by Mr. McLaren and representatives of the Antitrust Division of the Justice Department, and by representatives of the ITT whose names were divulged in the testimony.

The evidence is also to the effect, and this evidence is not contradicted by anybody, directly, that Mr. Kleindienst attended the

meeting, but that he sat there and did not participate in any way in the discussion. Then the evidence shows, and the law makes it plain, that the obligation was ultimately going to devolve upon Mr. Kleindienst to either approve or disapprove any settlement which might be made of the *Hartford* case.

There is no direct evidence that contradicts the testimony that Mr. Kleindienst sat in this meeting, and did not make any suggestions about what should be done, but merely listened. I do not consider that participating in the negotiations.

Then it comes down to the question of whether Mr. Kleindienst should have abstained from attending that meeting and seeking to acquaint himself with facts which would enable him later to approve or disapprove a settlement, if a settlement such as was discussed in the meeting, was arrived at.

It seems to me that assuming that the direct testimony before this committee is credible, and in the absence of drawing any inferences that are not revealed directly by the testimony, it would be a proper discharge of his duty ultimately to approve or disapprove of a settlement, for Mr. Kleindienst to elect to sit there and hear the discussions, rather than to wait until later and see what Mr. McLaren subsequently presented in respect to a proposed settlement.

Judge McLaren has testified that he negotiated and approved the settlement, and all that Mr. Kleindienst did was to comply with the statute, and approve what he, Judge McLaren, had negotiated.

I am not trying to engage in semantics with anybody, but it seems to me that that evidence is susceptible to the interpretation that Mr. Kleindienst did not participate in the negotiations, that he merely called upon Mr. McLaren to conduct a hearing in respect to this matter of hardship called to his attention by Mr. Rohatyn, and that he merely listened to the matters mentioned in the hearing. If you can tell me anything indicating that such a conclusion as that is not correct, or not possible on this testimony, I will be glad to hear it now.

MR. ANDERSON. Well, of course, I believe that your interpretation has been extremely generous to Mr. Kleindienst. Felix Rohatyn came to see him for the purpose of seeking a settlement. Settlement negotiations were going on when Mr. Rohatyn emerged on the scene, at a higher level.

Mr. Rohatyn was instructed by the president of ITT to come to talk to the Attorney General in this matter, which position Mr. Kleindienst was acting in, to explain the dire financial hardships that the Antitrust Division's proposed action was going to cause.

He came hoping to change it. He came to Mr. Kleindienst hoping to change the results, to change the action that the Justice Department had embarked upon. Mr. Kleindienst sent him down, as you have said, to talk to Mr. McLaren.

Mr. McLaren was his subordinate.

Now, Senator, you and I have both had experiences of sending people down to talk to subordinates. If somebody comes to me with a story and I send him to Mr. Hume, the fact that I sent him to Mr. Hume does not require my coming there and drawing pictures. If I send somebody to Mr. Hume, and he goes in under my auspices, Mr. Hume is going to listen to him, and he is going to sit down and write a story based upon what he is told.

Now, I suspect that you have had the same relationship with your subordinates. I would guess that it is not always necessary for you to

spell out in exhaustive detail what you want them to do. If you send somebody to see them, and that person is articulate, the fact that you send him to him is enough. They will listen to what that person has to say, and it does not have to be repeated twice.

Well, afterwards Mr. Rohatyn came back to see Mr. Kleindienst, came back, if I recall, three times. Prior to then the Justice Department was embarked upon a different course. The entire course was changed as a result of Mr. Rohatyn's visit, at least that is Mr. Kleindienst's testimony. He said that the visit set in motion a series of events which changed what was going on, altered the whole thing, so the purpose for which Mr. Rohatyn came to see Mr. Kleindienst was fulfilled—a change.

The antitrust cases were dropped, and this was contrary to everything that Judge McLaren had been saying up to then. I would have to submit that he was very much influenced by Mr. Rohatyn.

Now, there is no way for me to get into his mind. I do not know whether the fact that Kleindienst, his boss, his superior, sent him down there and said, "Listen to this fellow." I do not know whether that is what changed McLaren's mind, or whether in fact it was Rohatyn's very persuasive arguments.

But, I suggest to you that Kleindienst played a very emphatic, a very positive role, that the whole purpose of the series of negotiations was to seek a settlement, and that it succeeded. The settlement was reached.

Senator ERVIN. I have had somewhat similar experiences practicing law. For example, I had to deal with a very considerable tax claim that the Internal Revenue Service was very adamant about. The Service was demanding what I conceived to be the last pound of flesh and the last drop of blood. I went through negotiations in the local offices of IRS in North Carolina, and I did not have much luck.

So I wrote the Commissioner of the Internal Revenue and asked him to give me an appointment with the proper authorities to take the matter up with. Being a country lawyer, I did not know much about the authorities in the IRS. The Commissioner made an appointment for me with some of his subordinates. I came up here, and I had a conference with those people, and I was able to persuade them that I was 95 percent right, and the Internal Revenue Service had been 95 percent wrong. So I reached a settlement of one tax claim.

And I never did attribute that, in any way, to the fact that the Commissioner of Revenue made the appointment for me.

Mr. ANDERSON. The thing that makes me even a little more suspicious is here we have a letter from Judge Walsh, Lawrence E. Walsh, one of the most eminent and respected attorneys in the Nation. He represented ITT, and it was his view, and he said, he said in a "Dear Dick" letter, signed "Ed," to Richard Kleindienst, dated April 16, 1971:

Looking back at the results of the Government antitrust cases in the Supreme Court, one must realize that if the Government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, at times the courts have adopted a position more extreme than that argued by the Department.

So, ITT's own attorney did not think they stood a prayer, that the only way they could win was to go in through the upper levels, through Mr. Peter Flanigan and Mr. Richard Kleindienst and arrange a

settlement. That is why they went there. That is what they were doing there.

Senator ERVIN. Well, I certainly agree with your opinion about Judge Walsh as a lawyer, and I certainly agree with you that that is a very intriguing letter.

I would also assert that when I was practicing law, I did not make admissions of that character against my clients.

Thank you.

Senator HRUSKA. Will the Senator yield?

Senator ERVIN. Thank you very much.

The CHAIRMAN. Well, we are going to recess now until 2 o'clock.

(Thereupon, at 12:40 p.m., the hearing was recessed, to reconvene at 2 p.m. this same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

TESTIMONY OF JACK ANDERSON AND BRIT HUME—Resumed

The CHAIRMAN. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Mr. Anderson, in connection with the hearings we are now in, and your article on the alleged improprieties in the ITT case, would you not say that your credibility as a reporter is also an important aspect of these hearings?

Mr. ANDERSON. Yes.

Senator COOK. Yes?

Well, to that extent, Mr. Chairman, I would like to put into the record, first, the testimony in the Interior nomination hearings that took place in 1969. I read from page 49. The question is asked by Senator Allott on that occasion to then Governor Hickel who was the nominee for Secretary of the Interior:

Senator ALLOTT. Along this same general line, I think it important that it be cleared up, in the Washington Post of January 6, Governor, an article appeared written by Drew Pearson and Jack Anderson in which they talked about water standards. I quote from the article: "Specifically, the Collier Carbon and Chemical Company was still dumping three and a half tons of ammonia into Cook Inlet every day from its North Kenai plant and there were no tangible plans for stopping this." Is this the plant, Governor, that you have referred to that is never operated?

Governor HICKEL. That is right, Senator. The plant has never been in operation.

Senator ALLOTT. What would you say as to the veracity of this statement?

Governor HICKEL. It is a sin to tell a lie.

Mr. Chairman, on September 22, 1969, there appeared in the Washington Post an article written by Mr. Jack Anderson entitled "Antipoverty Czar Embellishes Office." It proceeds to say that under Sargent Shriver the Antipoverty Office was unique in Government:

There were no carpets and the furnishings were thin. Rumsfeld has now added improvements. To be prepared should his budget-cutting efforts prove tiresome, he has added a bedroom to his executive suite. Expensive lamps now give a soft restful glow to the walls that were once lit by fluorescent tubes. The stark photographs of poverty are gone from the walls, replaced by pastoral scenes and as evidence of his new Cabinet rank, Rumsfeld has added the ultimate in executive status symbols, a private bathroom.

On September 25, in the Congressional Record, Senator Dominick, after he made a tour of the offices of Mr. Rumsfeld, had the following to say:

The following are some of the inaccuracies that are apparent in the column. The column states: "To be prepared should his budget-cutting efforts prove tiresome, he has added a bedroom in his executive suite." This is a total fabrication. The executive offices of OEO are at 1200 19th Street, Northwest, on the 8th floor, and consist of one room where Mr. Rumsfeld is and that room has his desk and one table in it. The article states: "Expensive lamps now give a soft, restful glow to the walls that were once lit by fluorescent tubes." There is not a lamp in the office either expensive or cheap, restful or not restful. There are three lamps general GSA issue in the reception area on the 8th floor. The article states there were no carpets. There are still no carpets in the entire building as far as I could see. The column also states the stark photographs of poverty are gone from the walls. There are some cardboard reproductions that Mr. Rumsfeld got on loan from the National Gallery. There are two of them. The poverty photographs are still there. The only other picture in the reception area is an official photograph of President Nixon.

There is a picture of the House of Representatives in session where Mr. Rumsfeld served for four terms. This could hardly be classed as a pastoral scene.

Mr. Anderson further states: "And as evidence of his new Cabinet rank, Rumsfeld has added the ultimate in executive status symbols, a private bathroom."

Mr. Rumsfeld as a member of the Cabinet is assistant to the President. There is no private bathroom. There are only two bathrooms on the 8th floor where Rumsfeld's office is located, one for ladies and one for men. I am informed Mr. Rumsfeld uses the latter.

Also on a WTOP, 6:30, byline dated June 12, 1971, "Admiral Moorer visits Spain." Jack Anderson:

The Pentagon put out no press release about Admiral Thomas Moorer's visit this last week to Spain. The Franco Government is not popular with our Allies but the Joint Chiefs of Staff consider Spain to be vital to the defense of the Mediterranean. The United States sent the Joint Chiefs Chairman to butter up dictator Franco and the Spanish military as much as possible.

For release Tuesday, June 1, 1971, morning briefing, Mr. Freedman available to the public. Announcement:

Admiral Moorer departs Andrews Air Force Base for two days to visit the Spanish capital and to be the guest of the chief of the Spanish high General Staff at Spain's annual military review on Sunday, June 6.

Also, Mr. Chairman, on Saturday, February 26, there appeared an article under the title of "Mr. Jack Anderson, target of anti-consumer lobbyists":

The Senators fighting to gut the bill have been helped by top officials of several government agencies who have fired off letters opposing the legislation to Senate Commerce Chairman Warren Magnuson, Democrat of Washington. These letters have also been leaked to selected Senators for use as ammunition in their efforts to weaken the legislation.

One such letter from the Commerce Department marked "Official Copy, please do not remove from file" makes a few well chosen platitudes about consumerism, then insists the bill should be weakened because it is necessary to insure business the protection of its secrets.

I would like to put that article into the record, Mr. Chairman, and also a letter from Senator Magnuson to the General Counsel of the Department of Commerce, the Department of HEW, and the Executive Office of the President, wherein the Chairman said:

Enclosed herewith is a copy of Committee Print 1 of S. 1797 which has been referred to this committee for consideration. The committee will be pleased to receive any comments you may care to offer concerning this proposed legislation. Kindly submit 20 copies of your reply.

The letters that Mr. Anderson refers to were letters that were all addressed to Hon. Warren G. Magnuson.

Your letter of October 15th requests the comments of this Department.

That is the one he refers to as being somehow or other a secret letter. The other one is Hon. Warren G. Magnuson:

This letter is in response to your request.

The other is from the Executive Office of the President to Senator Magnuson in which he says the same thing.

I would also state it is very interesting in the column, Mr. Chairman, because Mr. Anderson says:

One such letter from the Commerce Department marked "Official Copy, please do not remove from file".

It is very amusing to this Senator as a minority member of the Commerce Committee, because the only letters that are stamped "Official Copy, please do not remove from file," are stamped by the majority side of the Commerce Committee for letters that they put in their files when they receive them. So at least we know that the letter that Mr. Anderson got he got from the majority staff of the Commerce Committee.

I would like to put those into the record because I believe, Mr. Chairman, that one of the remarks that Mr. Anderson said not too long ago was that—

It distresses me when grown men don't know a lie when they see one.

I would also like to put into the record an article from the Saturday Review marked "Facts Versus Conclusions." Do I have time to read it before my 10 minutes is up?

Senator KENNEDY. You have 2 minutes.

Senator COOK. I will try my best:

On August 12, we received a telephone call from Brit Hume, assistant to Jack Anderson, the syndicated newspaper columnist and successor to Drew Pearson. He wanted to inquire about a rumor that Saturday Review had suppressed a critical article on the Kennedy Center for the Performing Arts in Washington, D.C. This rumor had to be considered in the context of the fact that Saturday Review publishes the Kennedy Center programs. We thanked Mr. Hume for calling to check on the facts.

After consulting with Roland Galatt, managing editor, and John Leer, science editor, we learned that the report was false. What had happened was that on December 19, 1970, Mr. Von Eckart, an architect and city planning expert for whom the editors have the highest regard and a regular contributor, had written to John Leer to inquire if he would consider publishing an article on the Kennedy Center in SR's environment section.

In his reply, Mr. Leer encouraged Mr. Von Eckart but stressed the importance of appraising the Center from an environmental viewpoint.

When the article arrived, Mr. Leer felt it did not sufficiently confine itself to environmental matters because of the predominantly cultural interests in the article. He asked Mr. Kolodin whether he might want to run the piece in the Multimedia section. He learned he was already working on a major article on the Kennedy Center which would deal with the cultural aspects of the Center.

In view of the obvious overlap we returned Mr. Von Eckart's article to him explaining why we could not run it. Mr. Kolodin's piece appeared later in SR. Mr. Von Eckart's article was subsequently published in the April 3, 1971, issue of the New Republic.

All this information was conveyed to Mr. Hume who expressed his appreciation for what he termed our candid and straightforward responses to his questions. He then asked whether we believed there was anything inappropriate in Mr. Colladin's dual role as critic for the Saturday Review and editor for the Kennedy Center programs.

We told him that Mr. Colladin had performed the same functions for many years with programs of New York's Lincoln Center also published by SR. If he were to examine Mr. Colladin's writing during that time he would find that Mr. Colladin's critical opinions of the Center were not muted. We did not know of a critic in the country with a stronger reputation for integrity.

Despite the foregoing, Jack Anderson wrote a syndicated column on August 16, 1971, that ignored the facts given to Mr. Hume and charged that Mr. Von Eckart's article had been suppressed. We can only conclude that whether because of deadlines or other extenuating circumstances, Mr. Anderson's column was written independently of the facts given Mr. Hume.

It is inconceivable to us that there can be any other explanation for what would otherwise be a breach of professional ethics.

I am sure my time is up. I will pursue it further.

Mr. ANDERSON. I would like to respond, if I may.

The CHAIRMAN. The document will be admitted into the record.

Mr. ANDERSON. I certainly agree that newsmen have an obligation to get their facts straight. I have told my reporters at least once a week whenever we have a staff meeting that a fact does not become a fact for our column until we can prove it.

I have told my reporters at least once a week that no cause in which they may believe, no cause in which they may have strong feelings about, can be helped by misrepresenting the facts. We do our best and we are devoted to the facts.

I am not going to say, anymore than any other newspaperman in this hearing room could say, that we never make mistakes. I will be glad to review each one of those.

The first one, a story by Drew Pearson. Well, he wrote it and I know nothing about it. I don't know whether he is right or whether Wally Hickel was right. I think it is quite possible that Drew could have been right. But in this case I don't know and I have no information on it. It would be difficult to set the record straight on that because Drew is no longer with us.

The second story was done by one of my reporters but I take full responsibility for it. It was, I think, the most glaring error the column has ever made. I will be glad to give you the circumstances. We had copies of the blueprints of renovations that were to be made at the office of the antipoverty czar. We had them in our possession. We put out a column sometimes in a hurry. We made a call to Rumsfeld's office. My reporter called Rumsfeld's office and asked him whether or not the renovations had been completed. The reporter should have gone over there to inspect them himself. He had the blueprints. He considered that to be adequate. He called Rumsfeld's office and Rumsfeld's office said that the renovations would be completed in another day or two. On Rumsfeld's office, as I later learned when Mr. Rumsfeld called me about it—I went over to visit him about it—it developed that the Rumsfeld office thought my reporter was asking a question about his White House office. It seems Mr. Rumsfeld had two offices. He was going to get them both refurbished. But he had only refurbished one. When the question was put to his office, the man who answered the question thought that my reporter was asking about the White House office and said, "Yes, that job will be done in a day or two." My reporter thought he was getting an answer about the office in the antipoverty office. It was a human mistake but it was a bad mistake and it was a mistake we ought not to have made and it is not going to be made again. Any time we say that an office has been refurbished we will go take a look at it next time and not just rely upon the statement from that office. That was a very bad mistake.

The other stories that you cited, except for Mr. Hume's, I don't have a clear recollection. They were done by reporters. I have great confidence in my reporters. I think I have the best investigative staff

in this town. I will be delighted to put up their record, stack up their record, against any other staff in this town, news staff or Senate staff, as far as getting the facts straight, as far as getting the facts clear. And I will.

I would appreciate the opportunity, Mr. Chairman, of bringing in the facts on these stories and set the record clear. If Senator Cook will wait until I can get that from my reporters, it will be put into the record. Mr. Hume is here and can comment about the last story. Since that was his story I will turn the mike over to him for a minute.

Mr. HUME. There was really no great dispute about the facts. It was another one of these semantic differences, Senator Cook. Irving Kolodin told me—

Senator Cook. I think you are right because the editorial is marked "Facts Versus Conclusions."

Mr. HUME. Mr. Norman Cousins, who wrote that editorial, seemed to think that his conclusions and opinions should be considered facts with those of others to be regarded merely as opinions. I think that is reflected in that particular case.

Senator Cook. I think there has been a great deal of that today.

Mr. HUME. Here was a case where the architecture critic for the Post had written a rather critical piece about the Kennedy Center. It was at a time when there was a lot of criticism forthcoming about the Center. Mr. Eckart had been told that his piece on the Kennedy Center would be accepted. It was not a normal freelance assignment. It was part of a regular series of columns he had been doing.

I think the Senator will understand the difference between a regular column and a freelance assignment. Regular columns are a forum, normally, for the writer to say what he pleases, more or less.

In any case, the column was not run. Instead, the piece that was run by Mr. Kolodin was an allout, down the line, point by point apology for the Kennedy Center. It took up virtually every argument that had been advanced to that time by critics, and it sought to dispel all of these impressions.

Moreover, a picture ran on the cover accompanying that article which painted that rather interesting building in a very, very favorable light. That same picture, interestingly enough, still continues to appear on the Center's programs. Mr. Kolodin apparently saw no conflict of interest in his being the editor of the Center's programs and his being the man who told the readers of the Saturday Review what they should think about the issues involved.

We felt it was a conflict of interest and discussions with Mr. Eckart as to the subject of his piece persuaded us this was not merely an editorial based on violation of the subject matter but something critical being suppressed.

Mr. Cousins' statements not to the contrary, I still believe that column was suppressed. It was not published. It was something that was to appear regularly.

I think if there was a breach of ethics involved, I think it was a breach of ethics on the part of Mr. Cousins for tolerating the situation in which his magazine, and, indeed, the very reporter assigned to the story, had an interest in the matter at hand, involving his editorship of their publication.

Mr. ANDERSON. In sum, we do stand on our record and we do make an effort to correct stories when we are wrong. If our credibility is going to be an issue here, we are prepared to come in with story after

story that has been proven right. We are prepared to cite document after document where the classification that we said was on it is in fact the classification that appeared on it.

We will submit our record for review.

Senator COOK. Mr. Chairman, I know my time is up—

The CHAIRMAN. Your time is up.

Mr. Bayh.

Senator BAYH. Thank you, Mr. Chairman.

I have no expertise whatsoever on any of the matters that were discussed here relative to what was in those columns or the other publications referred to. I do have a little expertise, as does everybody in this committee room who sat in on these hearings, about some of the things that have happened in this matter over which there is very little contest.

I would like to ask you, Mr. Anderson and Mr. Hume, just to clarify what has already been said and what has already been admitted.

I asked Mr. Kleindienst, and I don't have the verbatim transcript but it has been referred to on two or three occasions this morning. If it would not be a fair assessment of his meetings with Mr. Rohatyn to suggest that those meetings resulted in the Government's role being changed from that of a prosecutor prior to the meeting to a negotiator after the meeting.

Do you recall what Mr. Kleindienst said?

Mr. ANDERSON. To the best of my recollection, that is when he made the admission that his actions had set in motion a chain of events that led to a complete change in the Justice Department's attitude toward the case.

Senator BAYH. Do we not have ample testimony to the fact that early in the case the one thing that ITT said they could not afford would be to have divestiture of Hartford, that Hartford was the one company they had to have?

Mr. ANDERSON. That was made clear. Moreover, we had this carnivorous corporate monster that had been going around devouring small corporations and when they got the Hartford Fire, the Justice Department stepped in and said before they ever took a bite of it, before they ever attempted to swallow it, the Justice Department warned them not to do it. They did it anyhow.

Senator BAYH. I am just trying to make certain that what we have on the record has been pretty well admitted. First of all, ITT said early on that they could not afford to lose Hartford?

Mr. ANDERSON. That is right.

Senator BAYH. This was the whole basis of their economic argument.

Mr. ANDERSON. Even though they acquired it in defiance of the Antitrust Division warning.

Senator BAYH. And from the standpoint of the Government, the one absolute, indispensable item that had to be concluded in the final settlement was divestiture of Hartford?

Mr. ANDERSON. Yes, sir.

Senator BAYH. As a result of the events set in motion by that meeting or series of meetings between Mr. Kleindienst and Mr. Rohatyn we found that ITT got exactly what they wanted and the Government capitulated and gave in on the one point that they said they would not capitulate on?

Mr. ANDERSON. The record is clear on that.

Senator BAYH. Just as a Senator—I have never been an Attorney General and, frankly, after what we have seen here, I don't want to be, I would hate to have this committee questioning me—I can't get up tight over an Attorney General of the United States, whether he is Republican or Democrat, talking to a man who is an investment counselor, who happens to be on the board of directors of a corporation in the process of a suit with the Government.

What concerns me is what we have been led to believe early in our investigation and what has come out since. That is the O'Brien letter, of course, which told us what Mr. Kleindienst thought his role was. All good men can find different interpretations of the worlds "negotiation", "settlement", "exclusively" and all these things; but we were told by Mr. Kleindienst himself that his first association with this case was with the meeting with Mr. Rohatyn.

Then I noticed what my staff prepared for me. Just look at the sequence of events. After having told us, first of all, that the April 20 meeting was the first involvement of Mr. Kleindienst with ITT, we are then told of the April 16 spring frolic where Mr. John Ryan, a man who just happens to work for ITT, and who on closer investigation turns out to be the deputy director of the ITT Washington office, seems to have had a casual conversation with Mr. Kleindienst.

It later developed, I think, from Mr. Kleindienst's own testimony, that Mr. Ryan had persisted and had given Mr. Kleindienst a pretty hard time earlier. We then found out that Mr. Kleindienst had taken a call from Lawrence Walsh, asking for a delay. Then there was the Walsh letter delivered to Mr. Kleindienst asking for the delay.

The letter contains some reference by Mr. Walsh to Mr. Kleindienst saying, "You have already been consulted on the ITT problem." I don't know who had been there earlier, but that letter revealed an earlier contact than we had previously had disclosed to us.

Then Mr. Griswold was called to Mr. Kleindienst's office and with Mr. McLaren present this delay was granted contrary to the normal 10-day rule of the Supreme Court.

Finally, we get Mr. Rohatyn into the act. It is that inconsistency that troubles me.

Senator FONG. Will the Senator yield?

Senator BAYH. May I finish my 10 minutes and I will be glad to.

Senator FONG. Just for one second.

Senator BAYH. All right.

Senator FONG. I believe the Deputy Attorney General said he had to okay the suit against the ITT in the merger. He consented to the suit to enjoin the merger. That came long before any of these things happened. That was thrown out of court.

Senator BAYH. That was long before this particular conversation and this particular case.

Senator FONG. But to say that he did not know anything about ITT merger with the Hartford Insurance is not correct.

Senator BAYH. He said the only contact he had had was with Mr. Rohatyn and later on he remembered the casual conversation which I think we could all forget, casual conversations, with Mr. Ryan. Then we had the phone call from Mr. Lawrence Walsh. Mr. Lawrence Walsh is just not a nobody who happens to live in the neighborhood. There was the return phone call and then a letter.

I hope we can find out whom Mr. Walsh was talking about when he says in the letter, "You have already been consulted on the ITT problem." I don't fault Mr. Kleindienst for wanting to discuss this with everybody involved, but I think this committee has a right to know all the facts and we should have known them early on. Now let me move on to another matter.

Let me, if I may ask Mr. Hume to give us his opinion of Mrs. Beard's credibility.

I have to say that I have had a couple of meetings with Mrs. Beard. I have to be very frank that she never impressed me very favorably. I have never had a chance to test out her veracity. It is just her mannerisms, frankly, that I found offensive. This was back when I was a very young freshman Senator having been here the first few months.

Maybe I have become more callous to the Washington lobby corps. But I was fresh out of the State legislature and the big league lobbyists hit me pretty hard and I was rather offended by her mannerisms.

Can you give us your opinion about the credibility of Mrs. Beard? What do you think about her honesty? What do you think of her condition? Was she sober at the time? We have heard of efforts that will be made to discredit Mrs. Beard. She is a rather significant witness in this case and most all of us think she ought to be heard to clear this mess up.

Could you give us your impression? You are the only person who has talked to her.

Senator HRUSKA. Will the Senator specify times?

Mr. HUME. I will try to run through them all.

Senator BAYH. There were two times. I want to be honest about this. I have been critical about some of these involvements. I think anybody who has listened to my questions would gather that. I have to say frankly that I have not been impressed with my past associations with Mrs. Beard.

Mr. HUME. As my boss pointed out in his testimony, investigative reporters and lobbyists operate backstage in Washington and are not natural allies. I don't think Mrs. Beard would return my call had I not finally said that I seemed to have a paper from her files that she should really discuss with me. I think she is an abrasive person. She is blunt. She swears. I didn't find her an appealing person.

Senator BAYH. Did you think she was telling the truth? I don't mind if she offends me if she is telling me the truth.

Mr. HUME. I felt at the time I confronted her with the document and she said after some flustered comments that the initial on the face of the document was her own little "D" that she was clearly telling the truth in that case.

The reason is, of course, that it was something of what the lawyers call an admission against interest. If she had said that she never saw it before it might have been possible for us to verify the document in other ways.

As I said, we have confidence in our sources. But it would have made our course more difficult in trying to establish that the document was real. At that time I thought she was telling the truth.

Senator BAYH. Was she sober?

Mr. HUME. She was sober as far as I could tell at that time. The next night when I spoke to her by telephone and subsequently went to see her, I had the impression that she had been drinking. She was not intoxicated that I could tell. Her conversation was not impaired.

There was a trace of thickness in her voice. She had a highball in front of her as we talked and she nursed it as we discussed this subject matter.

She was extremely distraught. The attitude she had was that our obtaining this document was really one of the worst things that happened to her. She kept speaking in terms it was ruining her. So I think she was in a position where she felt she was, as she put it, over a barrel.

She indicated she was the kind of person who tried to stay out of the press, that she avoided being in the limelight. Fortune magazine had gone more or less against her will in an article a few years ago in which they picked her as one of the top few lobbyists in Washington and they even had trouble getting her to cooperate in that.

This was clearly an unusual set of circumstances for her to be meeting with a newspaperman between 10 and 12 o'clock at night so that she could, as she put it, tell her the whole truth about a document which has dire implications for her company and for one of our major political parties.

As I began to bore in and to ask her really the important questions, what it was she was actually referring to when she mentioned John Mitchell's name and said he was helping and so forth, I felt she was in the position where if she tried to tell me, well, it was all made up, that she didn't think I would believe that.

In fact, she told me that that had been suggested to her, and it would have been an untrue thing to say and, therefore, she wasn't that kind of person and wouldn't do that.

Senator BAYH. Did you ask her if perhaps this memorandum had been written to impress someone else with her importance?

Mr. HUME. That question didn't come up, Senator, but I thought about that possibility. ITT has issued statements saying that the addressee had never seen it until the day I brought it over there and allowed them to make a copy for their use. Clearly, if that is true, it wouldn't make much sense that she was trying to impress the addressee by writing the memorandum and never sending it to him.

Senator BAYH. Do you have any information from any sources that that statement by ITT is false?

Mr. HUME. The only information I have is Mrs. Beard's statement to me on the night that I talked to her on the phone that she had discussed this with Mr. Merriam and that he had said not that he hadn't received it but that he didn't know what he had done with it.

The other possibility, it seemed, was that this memo might have been written for the consumption of someone else, for someone else inside the company. But we have the original which tends to indicate that it couldn't have gotten to the very highest levels of the company unless there is something very unusual going on in the high levels of the company.

My feeling was that the memo was genuine, that it was written for the purpose stated therein, No. 1, to clear up the misunderstanding over the nature of the commitment that had been made, and, two, to urge this other official, Mr. Merriam, to be more discreet in discussing the convention commitment.

Mrs. Beard's discussion of her meeting with the Attorney General at the Governor's mansion in Kentucky, this was a highly unusual account she gave me but it was rich with detail. She had it in such a

way that it seemed unlikely to me that she could have fabricated this story even overnight, it was so detailed. She said that she had heard in advance, in fact, she said Governor Nunn, whom she described as a good and dear and close friend, had tipped her in advance that the Attorney General would be at this Kentucky Derby party, and that she might have the opportunity to meet with him at that time.

Senator BAYH. She told you that?

Mr. HUME. She told me that is what Governor Nunn had told her, that is right. I gather there was some kind of friendship between her and Governor Nunn because he testified that she was always present for his Derby parties for the whole time he was Governor.

Nevertheless, she said she wrote a memorandum at that point to Mr. Gerrity, senior vice president for public relations in New York. Mr. Gerrity, from what I understand of the structure, more or less has charge of overseeing the Washington operation. She said that Mr. Gerrity responded to that memorandum in a telephone conversation in which he gave her the broad outlines of what she should push for if she did indeed get into a discussion with the Attorney General over the merger cases.

She said she went to the party and I remember she said that the Attorney General's wife was present and she said some unpleasant things about the Attorney General's wife, about how she was being showy or something to that effect. She said, or she indicated that she was introduced to the Attorney General and as they were going in to dinner he took her aside. There were the three of them: Mrs. Beard, the Attorney General, and Governor Nunn.

She said that the Attorney General began to berate her angrily. He protested that she had been causing trouble for him by writing and having given on the floor of both Houses of Congress a number of speeches which were either critical of the Antitrust Division or critical of the handling of the ITT matter in general.

We haven't had time to research that any further because of these hearings so we don't know exactly whether the record will show that there have been such speeches made at her insistence or not. Nevertheless, that is what she said. He was concerned about that. She estimated that she had gotten about a dozen speeches made. In fact, I asked her at that time by whom? She said, Well, at the time I was working on two or three different projects and lobbying people in both Houses. I don't recall who exactly I sought out to do what. So she felt it would be unfair for her to mention names because it would mislead me.

Senator BAYH. Have you any idea what time frame we are talking about?

Mr. HUME. We are talking about the year or so leading up to the day of this meeting. This was something that had been going on for some period of time. She said the Attorney General was quite upset about this, and she said that the Attorney General had said that the White House, even the President, had called him and said to lay off ITT.

I said, "Lay off ITT, the President said that?" She said, "No, I think it is badly put. I think it was something along the lines of, 'Make a reasonable settlement, would you, please?'"

It is interesting to note that Dr. Liszka said that the Attorney General said to "go through the proper channels." That is his version of what she said. That could go either way. That could corroborate

the version she gave me or the version the Attorney General and Mr. Nunn have agreed upon.

Senator BAYH. I understand my time has expired. Let's remember, both of us, where we are, because I think Mrs. Beard's credibility is one of the most important things here.

As I said earlier, you are the only person who has been here to date who has talked with the woman.

Senator KENNEDY (presiding). Senator Mathias.

Senator MATHIAS. Mr. Anderson, in your statement you referred to the \$400,000 commitment as being in violation of the Corrupt Practices Act. Subsequently, the Senator from Nebraska placed in the record a statement or an opinion of the Attorney General defining that act and making a differentiation between contributions to a political party and contributions to a city which was attempting to attract a convention in the normal course of municipal business.

Senator KENNEDY. Would the Senator yield on that point, please?

Senator MATHIAS. Yes.

Senator KENNEDY. As I understand, it wasn't from the Attorney General, was it? Wasn't it from a law firm?

Senator HRUSKA. It was from Mr. Keeney, chief of the fraud section in the Criminal Division of the Department of Justice.

Senator KENNEDY. To Mr. DeMarco?

Senator HRUSKA. Mr. DeMarco wrote him a letter asking for an opinion.

I would like to have that letter of Mr. DeMarco put into the record, dated January 3, 1972. The letter I put into the record earlier was the response to that letter. While I have the floor I would suggest we put into the record at this point Sheldon S. Cohen's letter of September 1, 1971 bearing out a similar legal opinion on a related subject. Mr. Cohen is a former Internal Revenue Service Commissioner.

(The letters referred to follow:)

KALMBACH, DEMARCO, KNAPP & CHILLINGWORTH,
Los Angeles, Calif., January 3, 1972.

Re San Diego Republican National Convention.

HENRY PETERSEN, Esq.,

*Acting Assistant Attorney General, Criminal Division, Department of Justice,
Washington, D.C.*

DEAR MR. PETERSEN: We have been requested by certain clients to render a legal opinion respecting a possible conflict between the provisions of Title 18, United States Code, Sections 608, 610 and 611 on one hand, and Internal Revenue Bulletin 55-265 on the other hand, respecting contributions by taxpayers for the purpose of bringing a national political convention to the taxpayers' locality. Before rendering our opinion, we should like, if possible, to have the concurrence of your office that no conflict in fact exists between the applicable sections of Title 18 of the United States Code and the above cited Internal Revenue Bulletin.

A brief statement of the operative background facts are as follows:

In May 1971 when it became apparent that the City of San Diego stood a chance to become the site of the 1972 Republican National Convention, a local nonprofit committee was formed for the sole purpose of bringing the convention to San Diego. In connection with such activities, the local committee secured informal pledges from various business organizations in the community for financial aid sufficient to assure the Republican National Site Selection Committee that the City of San Diego would have a fund sufficient to support the necessary convention activities. The local committee secured the commitment of the City of San Diego and of the County of San Diego for donations of services of significant amounts and secured pledges from local businessmen and the San Diego Convention and Visitors Bureau for additional support. Based on the local committee's bid, sup-

ported by a pledge of \$600,000, the Republican National Site Selection Committee in fact selected the City of San Diego as the site for the August 1972 Republican National Convention.

Legal problems have developed in connection with funding the pledges heretofore made to the local committee in view of the apparent prohibition against such contributions as set forth in Title 18, United States Code Sections 608, 610 and 611. As you know, those sections provide in substance as follows:

(a) 18 USC 608 provides that no one may contribute in excess of \$5,000 during any calendar year in connection with any campaign or election, to or on behalf of any candidate for an elective Federal office, or to or on behalf of any committee or other organization engaged in trying to nominate or elect such a candidate.

(b) 18 USC 611 further provides that no one may purchase or buy any goods, commodities, advertisements, or articles of any kind or description if any of the proceeds directly or indirectly inure to the benefit of any candidate for Federal office, or any political committee or organization engaged in trying to nominate or elect such a candidate.

(c) 18 USC 610 provides no National Bank, or any corporation, may make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office. Further, no corporation or any labor organization may make a contribution or expenditure in connection with any election at which presidential and vice-presidential electors or a senator or a representative in or a delegate or resident commissioner to Congress are to be voted for.

The conflict becomes apparent when one considers the precise wording of Internal Revenue Bulletin 55-265 which establishes, for income tax purposes, the right of a taxpayer engaged in a trade or business in a locality to make contributions in connection with the selection of his home city as the site of a national political convention. The subject Internal Revenue Bulletin provides as follows:

"A contribution by a taxpayer engaged in a trade or business in a locality, to a committee organized for the purpose of bringing a national political convention to such locality, constitutes an allowable deduction for Federal income tax purposes as an ordinary and necessary business expense under the provisions of Section 162(a) of the Internal Revenue Code of 1954, provided such contribution is made with a reasonable expectation of financial return commensurate with the amount of the contribution."

It is clear that the Internal Revenue Service has not distinguished between taxpayers who are natural persons and those who are corporations, nor has it limited the deductibility of the contribution to the sum of \$5,000, provided the amount contributed is made with a "reasonable expectation of financial return commensurate with the contribution." It has been argued that if Title 18 USC 608, 610 and 611 were intended to apply to contributions in connection with a campaign to bring a national political convention to a particular locality, the Service would be condoning the commission of a felony by permitting corporations a deduction for a contribution made unlawful by the cited code sections.

Our research has not found any case which directly relates to contributions in connection with a national convention called to nominate a candidate for national office. All of the decided cases under the sections have related to contributions made to influence the election of a particular candidate in a particular election. The leading cases decided under the applicable sections seem to limit prosecutions to cases where the contribution was made "for the purpose of *active electioneering*", and not to situations where the contribution is made for the purpose of permitting a businessman's home city to be selected as the site for a national political convention.

Further clarification of the issue has been set forth in the Congressional Record, for November 30, 1971 at H11493 and 11494 where the Honorable Samuel Devine stated that the legislative history of the Corrupt Practices Act of 1925 and the years of practice under the law are very clear that contributions to a local committee for the sole purpose of bringing a national convention to the taxpayer's city were never intended to constitute a violation of the Act. Mr. Devine, in stating for the record that he had decided against offering an amendment to the pending election reform law, said:

"... after reviewing the legislative history of the 1925 Act, the many years of practice under that Act, the extensive hearings that have been held regarding the needed reforms under the old law and discovering that this problem has never been deemed to be an improper practice, and discussing this matter with a number of my colleagues, I do not feel that it is necessary. The old law is very clear that it does not prohibit such corporate contributions and the amended

language of the new law referring to 'contributions' and 'expenditures' makes it even clearer that such corporate contributions are not within the proscriptions of the Federal law."

It is therefore requested that you clarify the position of the Department of Justice respecting the question posed hereunder, and advise that your Department feels there is no conflict between the prohibitions of the Corrupt Practices Act (18 USC 608, 611) and Internal Revenue Bulletin 55-265; that absent such conflict, contributions made by local businessmen or corporations, subject to the express provisions and for the sole purposes stated in Internal Revenue Bulletin 55-265, will not constitute nor be treated as violations of the Federal Corrupt Practices Act subject to enforcement by your Department.

Kindly direct your response or any further requests for information on this matter to the undersigned.

Very truly yours,

FRANK DE MARCO, Jr.,
(For the Firm).

COHEN AND URETZ,
Washington, D.C., September 1, 1971.

Mr. ROBERT S. STRAUSS,
Treasurer, Democratic National Committee, Washington, D.C.

Dear Mr. STRAUSS: You have requested our advice concerning the deductibility, for Federal income tax purposes, of amounts paid for advertising in the convention program of the 1972 Democratic National Convention.

Amounts paid or incurred for advertising in a convention program of a political party distributed in connection with a convention held for the purpose of nominating candidates for the office of President and Vice President of the United States are deductible for Federal income tax purposes if the proceeds derived from the program are used only to defray the costs of conducting the convention, or a subsequent convention of the party also held for the purpose of nominating Presidential and Vice Presidential candidates.

Moreover, the amount expended must be otherwise deductible as an ordinary and necessary business expense and must be reasonable. If the total amount paid for the advertising is held not to be reasonable, no part of the expenditure is deductible. Nor will an amount paid for advertising be considered reasonable if it exceeds the amount which would be paid for comparable advertising in a comparable convention program of a non-political organization. A taxpayer may demonstrate that the amount is reasonable in light of the business he may expect to receive either directly as a result of the advertising, or as a result of the convention being held in an area in which he has a principal place of business.

Very truly yours.

SHELDON S. COHEN.

Senator MATHIAS. Subsequently, I think Mr. Hume stated that money was in fact—well, at least \$100,000 was in fact paid to the convention bureau of the city of San Diego. I wonder if he would go back and refresh my memory as to what he said subsequent to that as to some earmarking of the funds.

Mr. HUME. The way it was explained to me—

Senator MATHIAS. By whom?

Mr. HUME. By Leon Parma, who is an official active in the convention preparations. It was that the hope was that everyone associated with the convention, that perhaps they might not need this money after all. Therefore, the check had been kept on deposit by the convention and visitors bureau and had not been turned over to the party or any of the agencies of the party responsible for making the preparations for the convention.

He did say, however, when I asked him, that if this money is needed, to whom will it go, to be paid out for services of various kinds, to help the convention or rent or whatever, and he said no, it wouldn't work that way. It would be much more indirect than that. It would go to the party or to the agency of the party responsible for making these

preparations for the convention. That would be the way the thing would work. That was my understanding.

Senator HRUSKA. Was there a date attached to that conversation with Mr. Parma?

Mr. HUME. I have a calendar that might help you. I think it would be Saturday the 26th of February or Sunday the 27th.

Senator HRUSKA. And the place?

Mr. HUME. I was here calling him long distance in San Diego.

Senator HRUSKA. Was anybody listening on your end of the line besides yourself?

Mr. HUME. I don't recall that there was.

Senator HRUSKA. Thank you.

Senator MATHIAS. I want to get this firmly fixed in my own mind as to what the arrangement was. Was it to be used for general convention purposes and if not so used it would go to the Republican Party?

Mr. HUME. What I am trying to explain, Senator, is that the San Diego people are now saying they are hoping they won't have to use it at all, that the local sources will come through with enough funds so that the ITT share of the money will become superfluous and they will be able to not use it.

However, the money is there. If it is needed, and from what I have been able to tell, it will be needed, it will be paid over to the party or an agency of the party, as part of San Diego's bid to the Republican Party to win the convention for San Diego. That is my understanding.

Senator MATHIAS. In that same conversation with Mr. Parma, did you have any understanding as to whom the commitment had been made? I assume it was made by someone on behalf of the ITT. It seems to me it is critical for us to know who the offeree is.

Mr. HUME. I understand, Senator. My chronology of events that I have been able to put together indicates that the moment that the idea of several hundred thousand dollars in ITT's share of the money being available to support this convention developed during the dinner I described in the Half Moon Inn in San Diego during the ITT annual meeting last May, and the offer I gather was made at least in the presence of Congressman Wilson. Congressman Wilson has told me since that having heard this he said that he sort of went out on a limb and said that he would be responsible for seeing that it was raised and it was made good on and it would be \$400,000.

I believe Congressman Wilson has also confirmed, not to me but to another newspaperman, subsequent to this meeting over dinner, that there was another conversation between him and Mr. Geneen in which there was some adjustment in the original offer, an upward adjustment.

I believe that conversation occurred on the 24th of June. I am not absolutely positive of that and I haven't spoken to Congressman Wilson about that particular aspect of it. But I understand that to be the case. Congressman Wilson, as the San Diego Republican representative, was at least the person to whom this offer was originally communicated and has been more or less responsible for seeing that it is indeed made good, if necessary.

Senator Mathias, you probably know better than I do the formal arrangements or procedures that are used when the bidding process is going on for a city to win the convention and just exactly the proper form for such a commitment to take.

I am not briefed on that. I can't help you with that at all.

Senator MATHIAS. I would say you know a good deal more than I did about it. I have never been on a convention arrangements committee.

Mr. ANDERSON. Senator, in response to the first part of your question which was addressed to me, the law states that it is illegal for a corporation to make a contribution in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, and that included, of course, the President and the Vice President.

The letter from John Kinney has been made available to me, chief of the fraud section, who has tried to interpret this and says that it doesn't mean what it says.

He wrote this letter to Frank DeMarco, Jr. I don't know who he is. Maybe Senator Hruska can enlighten us on that. But I think it is customary for the courts to make that determination and not for somebody down in a fraud section to make it in a letter to some lawyer in Los Angeles.

Senator MATHIAS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Burdick—

Senator KENNEDY. Would the Senator yield for a moment?

Senator BURDICK. Yes.

Senator KENNEDY. I would like to put into the record a story on who Frank DeMarco is, entitled "The Covert Collector."

I yield.

Senator BURDICK. Mr. Anderson—

Senator SCOTT. Mr. Chairman, I don't think an inference should be left like that. As soon as a man's name is mentioned he is immediately convicted—

Senator KENNEDY. Would you yield?

Senator SCOTT. I don't know who he is either but I don't want him designated in two words.

Senator KENNEDY. Mr. DeMarco, as I understand, is a member of the firm of Kalmbach, DeMarco, Knapp & Chillingworth. The article I refer to is a story by Mr. James Polk that was printed in the Evening Star for February 2, and the title of which is "The Covert Collector":

A little-known lawyer in Newport Beach, Calif., has raised millions in undercover campaign funds in the last 4 years as the hidden money man for President Nixon.

Inside sources say the man, Herbert W. Kalmbach, the same man mentioned in Kalmbach, DeMarco, Knapp & Chillingworth—

. . . whose name has been a close-kept secret in White House politics, will be taking a crucial part again in Nixon's reelection race this year.

"Kalmbach travels as Nixon's personal agent throughout this country and as far as Europe to collect campaign checks from Republican donors. . . .

"Kalmbach helped raise nearly \$3 million in covert campaign money for key GOP Senate candidates in 1970 . . .

"Kalmbach is President Nixon's private attorney as well as campaign collector. He set up the purchase of the San Clemente estate for Nixon with a special \$1 million mortgage that can await repayment until after the President's term is over. His firm also handles the Nixon Foundation.

Since Nixon took office, Kalmbach's law firm has grown dramatically . . .

That is the article I was referring to, to the partner of DeMarco whom this letter was written to. I will be glad to include that, as Mr.

Scott has suggested, to try and explain exactly who the covert collector is.

(The article follows:)

THE COVERT COLLECTOR

GOP'S KALMBACH

(By James R. Polk, Special to The Star)

James R. Polk is a former Associated Press investigative reporter who is now doing campaign finance research under a grant from the Fund for Investigative Journalism.

A little-known lawyer in Newport Beach, Calif., has raised millions in under-cover campaign funds in the last four years as the hidden money man for President Nixon.

Inside sources say the man, Herbert W. Kalmbach, whose name has been a close-kept secret in White House politics, will be taking a crucial part again in Nixon's re-election race this year.

Kalmbach travels as Nixon's personal agent throughout this country and as far as Europe to collect campaign checks from Republican donors.

In Newport Beach, Kalmbach declined any comment. But surfacing from other sources in both government and GOP money circles were these disclosures:

1. Kalmbach helped raise nearly \$3 million in covert campaign money for key GOP Senate candidates in 1970. The checks were sent through a townhouse basement backroom used by former Nixon political aide Jack A. Gleason. But the operation was run from inside the White House by presidential assistant H. R. (Bob) Haldeman.

2. According to a White House source, Kalmbach is slated to join Maurice H. Stans as one of the top money managers of the 1972 campaign. In 1968, Kalmbach served under Stans, bringing in the large individual donations which often were steered through secret committees in Delaware and Illinois.

3. Kalmbach is President Nixon's private attorney as well as campaign collector. He set up the purchase of the San Clemente estate for Nixon with a special \$1 million mortgage that can await repayment until after the President's term is over. His firm also handles the Nixon Foundation.

4. Since Nixon took office, Kalmbach's law firm has grown dramatically. Kalmbach still has his own office in the seaside suburb of Newport Beach, but his firm's plush downtown suite now occupies an entire floor in one of Los Angeles' newest skyscrapers. Since 1968, the firm has gained such new clients as United Air Lines, Travelers Insurance Co., Marriott Corp. and MCA, the giant of the entertainment industry.

Most Nixon officials have been as guarded and untalkative about Kalmbach as he is. One source said, "I'm not going to unload on Herb—no way." But the details slowly emerged elsewhere in weeks of interviews.

In Los Angeles, oil tool millionaire Henry Salvatori, who gave more than \$100,000 for Nixon in 1968, described Kalmbach's role this way: "He's more or less the person who calls in certain people."

Asked whether this meant the big donors, Salvatori said, "He sort of correlates that activity."

Another attorney, a Democrat who has raised hundreds of thousands of dollars in Southern California for his own party's presidential races, said:

"Herb has been a man of mystery because he has never been out in front. But he's coming out more.

"He has the closeness and confidence of the presidency.³ That's the reason for his success. He's a friend of the President. People who give like to have the feel of the closeness of the presidency."

The money that Kalmbach collects comes from wealthy Nixon backers such as Salvatori, Chicago insurance man W. Clement Stone, Detroit industrialist Max M. Fisher, Pittsburgh executive Richard M. Scaife, Ambassador Arthur K. Watson in France, and many others—some well-known, some not.

SECRECY LOOPHOLES

Only a portion of this money has shown up on public records. The rest has been funneled through dummy committees using the loopholes for secrecy in the nation's capital and certain states. An aide with Stans and Kalmbach recalls

one man in 1968 staying up late into the night just to think up new names for dummy groups.

The campaign reform bill passed by Congress and now awaiting Nixon's signature is meant to bring most of these campaign donations out into the open for 1972—but the law won't take effect until April.

By then, many of the big checks for Nixon's estimated \$25 million re-election drive already may be in the bank, without the names appearing on campaign reports to Congress.

At least six previous \$100,000 donors, plus a number of corporation heads, were among White House dinner guests last weekend when a singer stunned the audience with an anti-war protest. Kalmbach and Stans were part of the gathering.

Kalmbach, 50, was a law school classmate of White House adviser Robert H. Finch at the University of Southern California after World War II. Apparently the only political title he ever held was Orange County co-chairman in Finch's successful race for lieutenant governor in California in 1966.

AIDES TO STANS

By 1968, Stans' closest money aides at Nixon's Park Avenue campaign headquarters in New York included both Kalmbach and Gleason. A source said Kalmbach helped bring in the big money, and Gleason helped set up the dummy committees.

Kalmbach returned to his expanding law practice in California in 1969, quietly handling the San Clemente purchase. Gleason followed Stans to the Commerce Department, became a White House political aide, then left in 1970 to move to a gray townhouse on 19th Street.

Through the basement of that townhouse flowed between \$2.5 million and \$3 million as part of the White House push to capture a GOP majority in the Senate.

The biggest chunk—\$250,000—went into Tennessee for winner William E. Brock III. The usual quota for other target states was \$150,000.

The key states included Florida, Indiana, Maryland, Nevada, New Mexico, North Dakota, Utah and Wyoming. Sen. J. Glenn Beall Jr. of Maryland was the only victor besides Brock in the states where much of the money was spent.

Kalmbach flew to Europe to collect campaign funds from such Nixon ambassadors as Watson in France, Walter H. Annenberg in Great Britain, J. William Middendorf II in the Netherlands, and others in Austria, Switzerland, Ireland and Luxembourg.

Other donors in the United States tapped for top GOP Senate races included such backers as chemical executive John M. Olin, TV ratings head Arthur C. Nielsen Sr., architect Charles Luckman in Los Angeles, oilman Walter R. Davis in Midland, Tex., investor Thomas A. Pappas of Boston, and perhaps two dozen others.

DAIRYMEN INVOLVED

All of the money moving through the townhouse operation came from individuals except \$100,000 from two controversial dairymen's funds known as TAPE and SPACE.

The checks were the first installment in more than \$400,000 given by dairy groups to GOP and Nixon committees in less than a year. A citizen's group is suing the Nixon administration to try to roll back an increase in milk price supports on the ground it was linked to the campaign outpouring.

The 1970 money was controlled by a White House group that included political aides Charles W. Colson and Harry S. Dent. The top-ranking official involved was Haldeman. This group decided which candidates would get how much from the townhouse setup. As many as 30 Republicans eventually got help.

Inside sources say part of the money from the Kalmbach fund-raising operation also went to pay for last-minute advertisements branding democratic candidates in eight states as the choice of radicals and extremists.

The ads in 70 newspapers bore the name of Washington attorney Carl L. Shipley and stirred one of the major disputes of the campaign. Two separate sources confirmed the financing came from the White House political effort.

Kalmbach could not be contacted either by telephone or in two visits to his law offices.

LEGAL ETHICS CITED

Asked by letter for an interview on his role both in politics and as the President's lawyer, Kalmbach wrote that legal ethics "makes it clear that it is not only improper but unprofessional for an attorney to discuss client matters . . ."

Since Nixon became President, the law firm of Kalmbach, DeMarco, Knapp & Chillingworth has grown impressively, both in location and legal practice.

From an eighth-floor suite in Century City in 1968, it moved first to a 19th-floor office in a bank tower in downtown Los Angeles, then this winter to the 44th floor near the top of the city's newest pillar of commerce.

The firm's listing of clients in a nationwide legal directory has shown the same dramatic climb. In 1968 it named companies such as Pacific Lighting, Newport National Bank, Atlantic Richfield and Stans' brokerage house in New York.

The 1971 directory takes up twice as much space for the Kalmbach firm. New clients include United Air Lines, Flying Tiger, MCA, Dart Industries, Marriott, Travelers Insurance, University of Southern California and, of course, the Richard Nixon Foundation.

Several new clients are linked with major GOP backers. Justin W. Dart, head of the drug chain, is a longtime United board member, recently headed the U.S.C. board of trustees, and is on the Nixon Foundation.

UNCLEAR TO CLIENTS

In some cases, the law firm's role seemed unclear to clients. Asked what the Kalmbach firm did for his company, one official said, "I have no idea."

But the legal head at Dart Industries said Kalmbach's firm handles its real estate purchases. And MCA's legal official said it was used in cable TV. He said the firm was retained through MCA vice president Taft Schreiber, who is also on the Nixon Foundation.

Kalmbach is the secretary of the foundation, created to build a Nixon presidential library. His firm handles all its legal work, and foundation President Leonard K. Firestone keeps his office in the Kalmbach suite.

Nixon's oceanside estate was bought three years ago under a special arrangement that gave Nixon use of the 21-acre layout while paying the immediate price for only 5 acres.

As announced by a White House official, the Nixons are spending \$340,000 for roughly one-fourth of the \$1.4 million estate with "no payment immediately due on the balance."

As a result, the deed on record at the Orange County seat of Santa Ana carries a unique mortgage "in the principal sum of \$1,000,000.00."

The White House announcement said no money would be due on the balance of the estate until the Nixons find an eventual purchaser for that land. Then payments can be spread out over five years. And the deed says the mortgage can be extended.

The purchase was carried out so discreetly, using a title company, that the Nixon name appears nowhere in the 14 pages of records.

Neither does Kalmbach's name. But four sources said he handled the estate deal.

Senator TUNNEY. Would the gentleman yield on that point?

Senator SCOTT. On that point, Mr. Chairman—

Senator KENNEDY. I am yielding to the Senator from California.

Senator SCOTT. I don't blame you.

Senator BURDICK. I have the time.

Senator TUNNEY. Will the Senator yield on that point?

Senator BURDICK. Yes.

Senator TUNNEY. At page 834-B of volume 1 of the 1972 edition of Martindale, Hubbel, it indicates that the Kalmbach firm represents the Richard Nixon Foundation and the Maurice Stans Foundation, in addition to other clients.

Senator KENNEDY. I am glad we have that in the record.

Senator BURDICK. Mr. Chairman?

Senator SCOTT. Mr. Chairman, I would like to be recognized to keep this record absolutely straight. The record will show that the Senator from Massachusetts picked up the name DeMarco and characterized him as a covert collector. He then reads a long article about a partner of Mr. DeMarco who turns out to be "The Covert Collector."

I would suggest that that is about on a par with the rest of the information the Senator from Massachusetts has brought out.

Senator KENNEDY. The Senator is quite correct in his observation. I would like to correct the record to show just who "The Covert Collection" really is.

Senator BURDICK. Mr. Chairman.

Mr. Anderson, would you turn to page 10 of your prepared statement? About halfway down the page you say:

When our column on the Beard memorandum was first published, Mr. Nunn was called for comment by the Associated Press. He acknowledged having had John and Martha Mitchell as his guests at the Kentucky Derby. But he said he did not know whether Mr. Mitchell had met Mrs. Beard at his home.

The same day the Chicago Daily News quoted Nunn as acknowledging that Mrs. Beard and Mr. Mitchell were at the reception following the Derby. The Daily News quoted Nunn as saying, "I have never heard any discussion about anything except generalities." These two news organizations reached Mr. Nunn before he had read John Mitchell's statement about our column.

Afterward, he decided to comment no further. He issued a statement saying he stood on what the Attorney General said. However, Ward Sinclair, of the Louisville Courier Journal, persuaded Mr. Nunn to answer one question about the nature of the discussion between Mr. Mitchell and Mrs. Beard.

Do you have any written copies or press releases or documentary evidence to show this statement by the Associated Press and the Chicago Daily News and the Louisville Courier?

Mr. ANDERSON. This information was taken from the papers. We didn't bring them with us but we will be glad to furnish them.

Senator BURDICK. Will you supply the copies of those articles for the record?

Mr. ANDERSON. Yes.

Senator BURDICK. I ask unanimous consent that they be made part of the record.

The CHAIRMAN. Very well.

(The articles referred to will be made a part of the record when they are received.)

Senator BURDICK. The balance of my time you can have to further answer the question of Mr. Bayh.

Mr. HUME. Where were we, Senator?

Senator BAYH. This is on the credibility question.

Mr. HUME. As I recall, I was getting around to explaining Mr. Mitchell did object to the channels through which Mrs. Beard had proceeded. According to the version Mrs. Beard gave me, the objection was not that she should not have approached him at the party, but that rather during the course of the past period in which she had been lobbying here on Capitol Hill on behalf of her company she had not come to see him. In fact, Mrs. Beard quoted the Attorney General as saying more than once, "Why didn't you come to see me?" She quoted the Attorney General as saying that he had known about her before ever coming to Washington and that he had been told or warned, I don't recall, she may have used that word, that she was the "politician" in the company and he knew all about her.

In fact, she even said that the Attorney General knew enough about it so that he asked about her son Bull Beard. As I indicated before, this version that she gave me was rather rich in detail. She said that his angry lecture of her went on for some time and was somewhat rambling.

Afterward, she was quite upset and shaken but she maintained her composure to the extent she could ask, "Do you want to talk about it?" and he gave an affirmative answer by nodding.

I don't recall exactly the details of how she said the conversation ended. She did, however, say that he said, "What do you want?" clearly meaning what companies did ITT want to retain in settlement of the cases.

She said, as she had been prepared to say because of her conversations with the authorities of ITT in New York, "We want Hartford Fire and part of Grinnell." And he snapped, "You can't have Grinnell," but he subsequently relented and indicated to her that they had something of an agreement on this.

She indicated also that they didn't sit down and write out the specific, absolute, point-by-point term of the agreement, but that they had kind of a politician's agreement on Hartford Fire and part of Grinnell.

I believe the testimony here will indicate they were considered crucial components of what ITT wanted in settlement.

Senator BAYH. Did she mention whether the money for the convention was ever discussed there?

Mr. HUME. She said it was not. She said it had not come into reality yet because the derby was held on the 1st of May and the annual meeting in San Diego was not until later that month.

She insisted repeatedly that this agreement that she hammered out in this session with the Attorney General had nothing whatever to do with the \$400,000 commitment, the implications in her memo to the contrary.

She insisted further and repeatedly Mr. Geneen never knew that this conversation with the Attorney General had taken place.

Senator BAYH, my impression of all of this was, and I offer it for what it is worth, that once she had said to us that that little "D" on the document was hers, and, indeed, the document was written by her, her options had been very badly limited.

If she didn't talk with me she was left with the prospect of our writing a story based on the memorandum with its dire implications of bribery and high finance. If she did talk to me and, indeed, tell me why she wanted me to believe the memo was erroneous and created a misleading impression, she had at least a chance of talking me out of the worst implications of the memorandum.

So I think her conversation with me made a certain amount of sense from her perspective. I was a little skeptical of her saying that this \$400,000 contribution was, as far as she knew, no factor, because the memo is so clear on that point.

I was also a little skeptical of her saying that Mr. Geneen had never known about this conversation with the Attorney General. Obviously, a woman with an abrasive personality who goes about lobbying in a city where lobbying is specialized as being charming and having the soft sell technique, a woman who has gone about it by being extremely abrasive and kicking people in the shins, so to speak, could not have survived if the boss, the man at the top, was not aware of her achievements.

So I pressed her again and again on that point. It was near the end when the doctor came in, and he did hear me repeatedly stressing that I was having a little trouble going along with the denial of the \$400,000 having anything to do with it, and also with the idea that Mr. Geneen was not informed about all this.

My impression was, Senator, at the time, and I still think, that she told me the truth as far as she was willing to go. Whether she told

me the truth about her not having had any conversation with Louie and her misstating this memo, she really didn't have a good explanation as to why she wrote this as clearly as she did.

So I remained skeptical about her credibility as far as those two key aspects are concerned. I think it makes a certain amount of sense from her perspective to try to hold back on those two things if they were true.

No. 1, obviously, publication of the memo was going to cause her grief and get her into considerable trouble with the company and other people as well. I think I had the impression that what she was trying to do was get me to not believe the worst implications of the memo and also talk me out of the idea that the man at the very top was involved.

Nevertheless, I felt that she had been basically truthful with me. The richness of the detail of her discription of this episode was fairly persuasive. I came away from that not totally convinced that she was telling me the truth, but persuaded enough so that I didn't have a feeling that I had just been through a session with somebody who was just spinning me entirely. I felt what she had told me was worthy of being published as a newsstory.

Senator BAYH. Did she mention to you or have you come across any evidence to back up some of the contentions that were made earlier, that ITT was trying to get her out of town, trying to discredit her veracity?

Mr. HUME. She told me when she went to the office the morning after I had been there, which would have been the morning of the day I spoke to her the second time, Thursday morning, February 24, that she arrived to find that ITT security officials from New York were there and that they were putting a lot of her files through a document shredder. I said, "Security officials? What kind of security officials does ITT have?"

She said, "Well, they are just guys that come down from New York from time to time and sweep our phones." By that I assume she meant they check them for any bugs or taps. She said they were putting the documents through a shredder and she got emotional in describing that because she said some of her private papers that dealt with things relating to her children, and she has five children, had been destroyed. She was very upset about that.

She said also—well, she said two things. One idea that was advanced to her was that she should tell me that all the detail about Mr. Mitchell in the memo was a lie and the other thing was that she should get out of town and stop talking to me.

She felt she could do neither because she was really telling me the truth and had never done anything bad and had never been mixed up in a bribery thing or any deal like this. That was the reason she took the unusual step, someone who is staying out of the limelight as a lobbyist, of sitting down in her home for 2 hours and telling me the whole story.

I came out feeling that much of what she said had credibility because of the richness of detail. We have all seen the *Clifford Irving* case and have seen that richness of detail is not the final indicator of accuracy and truth. Nevertheless, it made me feel because of her standing as a lobbyist and official of this company, that this was certainly worth printing as a news story.

You will note if you check the column that we wrote on that, that we started out by saying we have evidence that this deal was made between the Attorney General and the lobbyist.

The reason we said we had evidence was that we didn't feel we had proof. If we had proof we would undoubtedly have said so.

The CHAIRMAN. Senator Gurney.

Senator GURNEY. The so-called Beard memo, of course, is the crux of this case and what the case is founded upon.

Do you have the document with you, Mr. Anderson?

Mr. ANDERSON. Yes. This is the original.

Senator GURNEY. Is that the original?

Mr. ANDERSON. It is.

Senator GURNEY. I wonder if we can have that for our committee files?

Mr. ANDERSON. I have no objection to that.

Senator GURNEY. I request that it be placed in the committee files.

The CHAIRMAN. It will be placed in the file. Do you want it as an exhibit?

Senator GURNEY. Yes.

(The document referred to follows:)

PERSONAL AND CONFIDENTIAL

ITT

*Washington Office
1707 L Street, N.W.
Washington, D.C. 20036
Tel. (202) 296-6000
Date: June 25, 1971*

To: W. R. Merriam.

From: D. D. Beard.

Subject: San Diego Convention.

I just had a long talk with EJG. I'm so sorry that we got that call from the White House. I thought you and I had agreed very thoroughly that under no circumstances would anyone in this office discuss with anyone our participation in the Convention, including me. Other than permitting John Mitchell, Ed Reinecke, Bob Haldeman and Nixon (besides Wilson, of course) *no one* has known from whom that 400 thousand commitment had come. You can't imagine how many queries I've had from "friends" about this situation and I have in each and every case denied knowledge of any kind. It would be wise for all of us here to continue to do that, regardless of from whom any questions come; White House or whoever. John Mitchell has certainly kept it on the higher level only, we should be able to do the same.

I was afraid the discussion about the three hundred/four hundred thousand commitment would come up soon. If you remember, I suggested that we all stay out of that, other than the fact that I told you I had heard Hal up the original amount.

Now I understand from Ned that both he and you are upset about the decision to make it four hundred in *services*. Believe me, this is not what Hal said. Just after I talked with Ned, Wilson called me, to report on his meeting with Hal. Hal at no time told Wilson that our donation would be in *services ONLY*. In fact, quite the contrary. There would be very little cash involved, but certainly some. I am convinced, because of several conversations with Louie re Mitchell, that our noble commitment has gone a long way toward our negotiations on the mergers eventually coming out as Hal wants them. Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering.

We all know Hal and his big mouth! But this is one time he cannot tell you and Ned one thing and Wilson (and me) another!

I hope, dear Bill, that all of this can be reconciled—between Hal and Wilson—if all of us in this office remain totally ignorant of any commitment ITT has made to anyone. If it gets too much publicity, you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known. Please destroy this, huh?

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Senator GURNEY. When did you first find out about the memo?

Mr. ANDERSON. I received the memo Tuesday the 22d of February.

Senator GURNEY. And from whom did you receive it?

Mr. ANDERSON. From an inside source.

Senator GURNEY. What is the name of the inside source?

Mr. ANDERSON. I can't divulge it.

Senator GURNEY. What was that?

Mr. ANDERSON. I say I cannot divulge it.

Senator GURNEY. I am requesting that you do give the name.

Mr. ANDERSON. I am refusing to give it.

Senator GURNEY. I must say, Mr. Chairman, I don't think——

The CHAIRMAN. He has a right not to divulge it.

Senator GURNEY. I think the committee ought later probe the legality of the right, because I know of no common law or statutory right that would protect a source in this instance. I think this is an extremely important matter because this is the whole foundation of the case.

Mr. ANDERSON. Senator, if a newspaperman's sources can be identified and hauled before the Government every time we write a story, then the first amendment is absolutely meaningless.

Senator GURNEY. I am aware of the argument on the other side, Mr. Anderson. It is possible that you are right. I am not sure whether you are or not. There isn't any law in the case. There is a case on appeal now pending before the Supreme Court. The district court has decided one way and the court of appeals another and the Supreme Court actually hasn't ruled on it yet. I was simply saying to the chairman that I know of no law that would protect the source. That is all. You may be right and I may be right.

Mr. ANDERSON. In any case, Senator, Dita Beard is the author of the memo as authenticated to the doctor. You can, of course, call her and question her about it.

Senator GURNEY. We are, indeed. Of course, there is conflicting testimony on that. The doctor said what she said and he was present in part of the conversation—I think he said her statement was that she didn't remember writing it. So we do have a conflict about it. In any event, let's go on. Did you receive it from an employee of ITT?

Mr. ANDERSON. It came from an inside source and, Senator, with all due respect, I am not going to identify further than that.

Senator GURNEY. Inside ITT?

Mr. ANDERSON. I am not going to identify beyond that.

Senator GURNEY. Inside——

Mr. ANDERSON. ITT.

Senator GURNEY. Did you pay for this document?

Mr. ANDERSON. No.

Senator GURNEY. It was given to you freely?

Mr. ANDERSON. Yes.

Senator GURNEY. Have you ever paid for any sources of information?

Mr. ANDERSON. Never, except to a bona fide newspaperman whose profession it is to dig out stories. I have paid newspapermen not of my staff for stories that they have dug out in their professional capacities.

Senator GURNEY. I am not talking about stories. I am talking about information. Have you ever paid for information?

Mr. ANDERSON. No. I object to that practice. I don't know that it would make any difference. I know the FBI does it. I know our own Government does it, but somehow it seems to taint the information to me and I prefer not to do it.

Senator GURNEY. You have never paid for a document or any piece of information that formed the basis for one of your stories?

Mr. ANDERSON. No. When they ask for money I sent them on to some other reporter. I am also a tightwad, Senator.

Senator GURNEY. I will certainly agree with you that you have one of the best means of acquiring information in Washington.

Mr. ANDERSON. I wish you would tell that to Senator Cook. Thank you.

Senator GURNEY. I am not commenting on how good the information is. Tell me, how are you able to get that? What motivates people to give it to you?

Mr. ANDERSON. Senator, I will try to give you as honest an answer as I can to that. I believe that some people who contact us do so for very personal reasons, because they have grudges against someone, because they have been fired or mistreated or abused in their own opinion and they want to get back at the people who they feel abused them.

I think that many, and I would like to feel most, of those who give us information do so because they believe that the public interest demands it, that they have an obligation in a democracy, in a free country, to see that the public gets their information.

I think occasionally I hear from your colleagues up here about the stories that I believe have a definite partisan purpose. But wherever these stories come from, we try, to the best of our ability, without subpoena power, within the limits of that we do have as newspapermen, we try our very best to pin down the details and to determine whether or not the stories are true, so by the time we print them the source really is irrelevant because it is then our story and we take responsibility for it.

Senator GURNEY. How do you authenticate the material that you receive from informants, people who give you information?

Mr. ANDERSON. Well, I think what we did about this memo is a good example. We had this memo about a week or more before we wrote a story about it. We talked to everyone whose name is mentioned in the memo. We went first of all to the author of the memo. We gave her every opportunity to explain it in great detail. We spent 72 hours trying to get the Justice Department to give us its explanation.

When the Justice Department spokesman told us that the memo was false, could be proven false, we asked for the proof. As of this date we still haven't received it.

We told them that the moment that we get that proof from the Justice Department we will publish a column stating that the memo is false. The proof still hasn't come.

Senator GURNEY. Incidentally, in seeking information when you are talking to someone, either in a personal interview or on the phone, do you tape the conversations with the people?

Mr. ANDERSON. No, we do not.

Senator GURNEY. You never use a tape recorder in your discussions?

Mr. ANDERSON. I have never used it and to the best of my knowledge, none of my reporters do. Certainly, if they did, they would notify whoever was at the end of the line.

Senator GURNEY. How about in telephone conversations?

Mr. ANDERSON. In telephone conversations there has been an instance or two when we had a witness on the line. It would be our practice, however, not to do that even without telling the person whom we were interviewing that there were two people on the line.

Senator GURNEY. No taping of a conversation?

Mr. ANDERSON. Never to my knowledge.

Senator GURNEY. I am now speaking about yourself.

Mr. ANDERSON. I have never taped a telephone conversation.

Senator GURNEY. Let me ask Mr. Hume, if I may, a question.

When you had your interview with Mrs. Beard, my recollection is that you say no notes were taken during the interview.

Mr. HUME. That is right.

Senator GURNEY. But that you went home and typed up a memorandum?

Mr. HUME. Well, that would be glorifying it. It really is just reporter's notes made on a typewriter. They were just notes hammered out on a typewriter with great haste to try to get it down before my memory began to slip.

Senator GURNEY. You had that with you referring to it a short time ago.

Mr. HUME. Yes, sir, I did.

Senator GURNEY. How many pages in that memo?

Mr. HUME. Six.

Senator GURNEY. And how long was it before you typed it following your interview with Mrs. Beard?

Mr. HUME. Well, it was as long as it took me to get home. I suppose it might have been 25 or 30 minutes.

Senator GURNEY. You mentioned that the memo contained, I think you said, a good many four letter words.

Mr. HUME. Yes. They were quoted.

Senator GURNEY. You were somewhat embarrassed about referring to those before the committee. I am not asking for those, I am not interested in those. I am curious, though, are there a great many in the memo?

Mr. HUME. No, there are not a great many. There is reference at one point in the memo to the fact that Mrs. Beard laced her conversation with four-letter words. Senator Gurney, I would like to make a point about that memo. I really have no objection to anything in that memo becoming public or anyone seeing it. The only reason I objected at the time Senator Cook asked for it, and I can't fault him for so doing, is that it put me in a position of being asked by a Government body of one kind or another to surrender my notes. It was the way it came about that gave me the problem.

If Senator Cook had not made the request there is a possibility I might have volunteered the notes for the record. It is just a question of being in a position where it appeared that a Government agency of one kind or another was seizing a reporter's notes or taking them on its authority.

I feel as a matter of principle it was a bad precedent for me to be involved in setting, not just for myself, but my colleagues.

Senator Cook. Will the Senator yield for a moment?

Mr. Hume, I will withdraw the request. Let me say that the reason I asked it is that I do believe in the integrity of a reporter's sources,

very much so, and I think he is entitled to that. But we knew the source of these notes because you had testified that you had been to her home and this is what she had said. I didn't really feel I was asking you to give up a source.

Mr. HUME. I understand that, Senator Cook.

Senator COOK. I will withdraw the request.

Senator GURNEY. Back to the way the memo was transcribed or put together, and this is what I am referring to. Did you use these expletives that she used in the context they were used or simply put in your memo—

Mr. HUME. In a couple of places they are used in context.

Senator GURNEY. How could you remember this?

Mr. HUME. Because after a conversation with someone there are certain comments that stand out in your mind and that you are able to recall.

Senator GURNEY. What would that have to do with the purport of the memorandum?

Mr. HUME. Senator Gurney, at the time I sat down, and made those notes I was uncertain as to everything that was significant or what was significant and what was not. I was trying as best I could under certain events, and it was late and I was tired, and I was trying to get everything down.

Senator GURNEY. Did you have a tape recorder with you?

Mr. HUME. No, sir, I did not.

Senator GURNEY. Your testimony is that you did not?

Mr. HUME. That is right.

Senator GURNEY. Mr. Anderson, was the document that we are talking about here stolen from the file of ITT?

Mr. ANDERSON. I would be unable to answer that. I would assume that the source had a legitimate access to it.

Senator GURNEY. Do you mean that he thought ITT wouldn't have objected if he took it out of the files and gave it to you?

Mr. ANDERSON. I think he believed that ITT would have objected very much.

Senator GURNEY. Then wouldn't that be stealing of the document if it wasn't his, and it belonged to ITT?

Mr. ANDERSON. I will tell you what we will do, we will make a copy and give it back to them.

Senator GURNEY. That is not my question, Mr. Anderson. My question was was the document stolen from the files of ITT?

Mr. ANDERSON. Again, I don't know how the source got it.

Senator GURNEY. If it didn't belong to the person who gave it to you—it did not, did it? It wasn't the personal property of the person who gave it to you?

Mr. ANDERSON. Senator, I have at least two dozen documents from the files of ITT. These are documents that are stamped personal and confidential. They were never intended to be read by the public. I assure you that they are in the public interest to be read and through the columns they are going to be read.

Senator GURNEY. Was this memo the property of the person who gave it to you?

Mr. ANDERSON. I have no way of responding.

Senator GURNEY. Did Mrs. Beard give it to you?

Mr. ANDERSON. Mrs. Beard did not.

Senator GURNEY. It was someone other than Mrs. Beard?

Mr. ANDERSON. That is true.

Mr. HUME. Senator Gurney, it might be worth mentioning that the first thing we did with this document was to go over and show it to Mrs. Beard.

Senator GURNEY. I understand that. I am trying to find out. This is a very important hearing. I think it is just as important to find out the background of this memo as it is about the Justice Department action. What the committee is trying to do is get the truth and let the chips fall where they may.

On that score, do you think a lot of the information in the form of documenting material which you obtained was stolen?

Mr. ANDERSON. I can't really assess the motives. I believe, though, in most cases the documents that I have received are from people who have as their motives the public interest.

Senator GURNEY. The question was do you think they are stolen? the chips fall where they may.

Mr. ANDERSON. I don't know—I am going to have to leave that up to you. As far as the Government documents I get, those belong to the people. I just give them back to the people.

Senator GURNEY. You are talking about the secret documents you have obtained from the Pentagon from time to time?

Mr. ANDERSON. Yes. Would you like to go into that? I will be prepared to discuss it.

Senator GURNEY. I suppose we might as well.

The CHAIRMAN. I have given you 19 minutes.

Senator GURNEY. Thank you.

The CHAIRMAN. Senator Tunney.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Hume, at the time Senator Kennedy was questioning you, you were going through your notes, and I assume from some of the responses that you gave to Senator Bayh that you also were referring to your notes.

Mr. HUME. Well, yes.

Senator TUNNEY. I would like you to continue, if you would, with the discourse you were giving at the time Senator Kennedy's time ran out. Would you just pick up where you left off?

Mr. HUME. Senator Tunney, one of the points that Mrs. Beard stressed to me as to her motive in writing this memo was that she was trying very hard to impress upon Mr. Merriam the need for discretion in this case.

One of the things that she told me, and she complained rather bitterly in the conversation about the bad press ITT had gotten in regard to the convention, and the suggestion that there may have been a trade-off.

But she did say that Mr. Merriam had created, in her mind, some of the bad publicity because she said that he had let slip a comment at the Metropolitan Club—this was apparently sometime close to the time of the memo—that Mr. Geneen had had a conversation with Bob Wilson and that the outcome of the antitrust cases then pending had been assured to go ITT's way.

She said this remark had been overheard by Richard Dudman, she thought it was, of the St. Louis Post-Dispatch. She made it clear throughout our conversation that she was frequently annoyed by what she felt was Mr. Merriam's lack of grasp of how to handle these

delicate situations, arranging a convention, trying to bring something like that about, which publicity would not help.

I wanted to mention also, and I don't know if I made it clear earlier, that she indicated she had begun to deal with Mr. Reinecke on this convention as far back as January. It was an idea that they both had or he had and approached her and got her interested or vice versa.

But, apparently, Mr. Reinecke had been assigned by the Governor of California to try to bring this convention into the State. She did not know the time of Mr. Reinecke's meeting with Mr. Mitchell in which she said he was informed about this \$400,000 commitment.

She did say that the Half Moon Inn in San Diego was the key meeting, about the 12th or 13th of May, where the whole thing really crystalized. From then on it was downhill.

Senator TUNNEY. Downhill in what way?

Mr. HUME. Downhill in the sense that the road was easier to travel toward getting the convention in San Diego, that it was helped.

Senator TUNNEY. Did she indicate why she wrote the memo?

Mr. HUME. Yes. Well, the main reason—she said that one of the reasons was she wanted to “put some sense into the head of that stupid (blank) Merriam.” She seemed to feel that Mr. Merriam needed to be, in fact, I am glad you asked that, when Mrs. Beard told me that, in fact, when she was expressing dismay to me over the fact that I had this document, she refers in the memo to a conversation with E. G., Edward Gerrity, the senior vice president for public relations, when she was talking to him he said, “Put it in writing.” Apparently she was remonstrating with him about the difficulties she was having with Mr. Merriam.

He said to put it in writing and she rolled her eyes around to say, “My Lord, what that brought about.” She indicated also that one of the documents that went through the shredder was a memo she wrote to Mr. Gerrity prior to the Kentucky Derby meeting with Mr. Mitchell. Apparently, she was on orders about this.

Senator TUNNEY. Have you at any time developed any facts which would tend to corroborate the fact that Mrs. Beard wrote the memorandum?

Mr. HUME. Well, yes, actually. The minute I came into her house she said, “I know you got this from Jack Gleason.” I said, quite honestly, “Who is Jack Gleason?” She looked at me as if to say, “You can't fool me, boy, I have been around too long to be spun by any comment like that.”

The truth is I didn't know who Jack Gleason was but I made it my business to find out over the weekend when I was trying to delve into the details.

Mr. Gleason is a partner in a consulting firm, a former White House aide. He told me, when I called him—he had been over, apparently, on Wednesday or Thursday of that week to see Mr. Merriam with whom he deals at ITT because ITT is one of his clients, and he had been shown the memo.

He indicated that it was the first time he had ever seen it. I asked him some questions about it and he said, “Well, I will try to tell you what happened.” He said that confusion developed sometime in June as to just exactly what the nature of the company's commitment was. That is reflected in the memorandum, whether it should be services or cash.

He said he got a call from Bill Merriam at ITT to try to do what he could to find out what the party and the White House was expecting out of ITT on this convention, and he did that by calling Bill Timmons, who is apparently the liaison at the White House as far as convention arrangements are concerned.

He reported what Mr. Timmons had told him back to Mr. Merriam who, in turn, must have discussed it with Mrs. Beard because Mr. Gleason found out that Timmons was in on it and called him on the phone and dressed him down. From Mr. Gleason's version of things, what he seemed to think happened was that the call from the White House was really with reference to his discussion with Mr. Timmons.

Mr. Gleason was quite clear in his recollection of this. As my boss testified, he told us this past weekend that he had reconfirmed this with Mr. Timmons, that it did happen, but Mr. Timmons denied the whole thing.

That is another loose end, it seems to me, that needs to be tied up in this matter. But that seemed to establish the circumstances around which this memo might have been written. I want to stress that I got more than simply Mrs. Beard's confirmation that it was here little "D" on it.

On the night I met her at her home she said, "They wanted me to tell you that I made this up." But she said something like, "I wrote this memo. You know I wrote this memo. There is no use trying to pretend otherwise." She underscored the confirmation of it that she had given me a day earlier.

I gather that the memo really had two purposes: to clear up Mr. Merriam's apparent confusion, and I did speak to Congressman Wilson about this. He said yes, Bill Merriam had gotten confused about the nature of the commitment, about this time. So that was further corroboration of these apparent circumstances.

She said, or she indicated that there were two purposes. One was to straighten him out on the cash versus services issue, and the other was to get it in his head that it was necessary to be very discreet about this matter and keep it on a high level only, as she put it.

Senator TUNNEY. The comments that she made to you regarding the President's remarks to the Attorney General represent an extremely serious charge. I was wondering if you could in any way indicate what her sources were.

Mr. HUME. She said that the Attorney General told her during the discussion in the dinner party that the President had called him up and put pressure on him. She gave first the quote that the President said, "Lay off ITT," and that sounded so amazing to me that I pressed her. I said, "He said 'lay off ITT'?" And she said, "No, I am sorry. It was more like 'make a reasonable settlement.'"

Her belief that that happened seems to be borne out in the memo when she said that the President told me things should be worked out fairly.

The CHAIRMAN. She said that the President called Attorney General Mitchell at the Governor's mansion in Kentucky and told him to lay off ITT?

Mr. HUME. I am not sure I quite understand.

The CHAIRMAN. I am asking you if that was your testimony?

Mr. HUME. My testimony is that the Attorney General said at the party in Kentucky to her, according to her, that he, meaning the Attorney General, had received a call from the President, or had

been told by the President, first she said "Lay off ITT" and then she softened that to "Make a reasonable settlement in these cases."

The CHAIRMAN. Was that the President of the United States?

Mr. HUME. Yes.

Senator GURNEY. Was the doctor present when she said this to you?

Mr. HUME. No, I don't believe so. He came in quite late. We really covered all bases by the time he got there and we were kind of going back over things. He was not present at that time.

Senator GURNEY. Was anybody else present?

Mr. HUME. There were people in the house, but we were alone in the kitchen.

Senator TUNNEY. I realize my time has expired. Or do I have more time? I am perfectly willing to continue.

The CHAIRMAN. I know you are.

Senator HRUSKA.

Senator HRUSKA. Tell us about this allegation as to President Nixon?

Mr. HUME. Mrs. Beard told me, the night I spoke with her at her home, when she was at the Kentucky Derby dinner and was involved in this conversation with Attorney General Mitchell, that the Attorney General told her, during the period preceding the meeting, along the way somewhere—she didn't specify if he said when—he had either gotten a call from the President or had been verbally instructed by the President in some other context to go easy on ITT, "lay off ITT" being the way she first expressed it. I said, "Do you mean to say that he said, the President said, to lay off ITT?" She said, "No, it was more like 'make a reasonable settlement with ITT.'"

Senator HRUSKA. Between whom was the telephone conversation held or alleged to have been held? There are two people involved in a telephone conversation. Which two people was it?

Mr. HUME. She said—

Senator HRUSKA. No, no.

Mr. HUME. Senator Hruska, I have no independent knowledge of this. I can only relate what she told me.

The CHAIRMAN. Let him tell you.

Mr. HUME. What she told me was that she was told by the Attorney General during the Kentucky party—

The CHAIRMAN. That is John Mitchell?

Mr. HUME. That is John Mitchell. John Mitchell is talking. This is her version.

Senator HRUSKA. Say it.

Mr. HUME. I want to make that clear. That the Attorney General said he had received a call or had been told by the President verbally in some other context that he and the Justice Department should—first she said "Lay off ITT," that was the way she quoted the Attorney General, and later she softened that quote somewhat.

The CHAIRMAN. Not much though.

Senator HRUSKA. Mr. Chairman, in your absence temporarily there was placed in the record a letter from Sheldon Cohen, former Commissioner of the Internal Revenue Service, on the legality of contributions to political conventions. I have here an advertising contract in quadruplicate of the 1972 Democratic National Convention program pertaining to the 1972 convention. I would like to have it put in the record. I read only one sentence on it. "Funds received from

advertising will be used in conformity with the Internal Revenue Code, section 276, as amended by Public Law 90-364."

I have requested a printed form of similar nature from the Republican National Committee and upon receiving it I shall supply that for the record.

The CHAIRMAN. That will be entered.

(The document referred to follows:)

1972 DEMOCRATIC NATIONAL CONVENTION PROGRAM

(Sixth Floor, 2600 Virginia Avenue, N.W., Washington, D.C. 20037, Telephone (202) 333-8750)

ADVERTISING CONTRACT

Enclosed is a check payable to the 1972 Democratic Convention Program Committee for which I agree to purchase in the program book published in connection with the 1972 National Convention of the Democratic Party the following space, subject to the terms set forth on the back of this order:

----- pages with ----- Colors \$ -----
(Number) (Number)

Material for printing consisting of -----

Identified by the following headline -----

Will be shipped on (date) -----

By (name) -----

Address -----

Contract Conditions

Funds received from advertising will be used in conformity with the Internal Revenue Code, Section 276, as amended by Public Law 90-364.

Copy Acceptance: The Democratic National Committee reserves the right to reject any advertising which, in its opinion, is offensive or in bad taste.

Advertising Responsibility: All advertisements are accepted and published on the representation of the advertiser that they are authorized to publish same. It is understood that the advertiser agrees unconditionally to indemnify and save the publisher harmless, on demand, from and against any and all loss, liability and expense suffered or incurred by the publisher by reason of any claims or suits based on the contents of subject matter of such advertisements.

Return one copy with check to: Mr. George L. Bristol, Democratic National Committee, 2600 Virginia Avenue, N.W., Washington, D.C. 20037.

Authorized Signature -----

Title ----- Date -----

Company Name -----

Address -----

Accepted: Democratic National Convention Committee—By -----

Forward one copy to the person responsible for shipping your advertisement to the printer.

Advertising Rates

Full page Black and White -----	\$10,000
Full page Black and 1 Process Color -----	\$10,600
Full page Four Color Process -----	\$12,500
Full page Matched Color -----	(Quote on request)

Cover positions at extra cost will be allocated on a priority basis

No fractional pages accepted

All advertising must be prepaid

Mechanical Requirements

- a. Trim size— $8\frac{3}{8} \times 10\frac{7}{8}$ inches.
- b. Standard Unit Sizes in inches:
 - Non-Bleed page (cover or text) $7'' \times 10''$
 - Bleed page: (cover or text) $8\frac{1}{2}'' \times 11\frac{1}{8}''$
 - Non-Bleed, 2 page spread: $15'' \times 10''$
 - Bleed, 2 page spread: $17'' \times 11\frac{1}{8}''$
- c. Halftones—100–133 line screen.
- d. To be printed: web offset text and sheetfed offset cover.
- e. Paper stock: Coated Text and Cover.
- f. Copy: right reading offset negatives, emulsion down preferred. Positives, Scotch prints, Reproduction proofs, Camera ready art, Cronar conversions, accepted. For four color, offset negatives emulsion down, right reading preferred; positives accepted. Progressive proofs required—proofing should be head to foot. Halftone screens should be 100–133 line.
- g. Publication set advertisements to use faces and sizes available in publisher's plant, otherwise outside typography will be billed at cost.
- h. If copy needs to be cropped for size, it should be scaled on a tissue overlay in proper proportion.

Shipping Instructions

Ship all material to: Mr. George L. Bristol, Democratic National Committee, 2600 Virginia Avenue, N.W., Washington, D.C. 20037.

Closing Dates

Contract payment and printing material must be received on or before January 15, 1972.

Information and Questions

Questions should be addressed to Mr. George Bristol, 1972 Democratic Convention Program Committee, 6th Floor, 2600 Virginia Avenue, N.W., Washington, D.C. 20037, Phone (202) 333–8750.

Questions concerning printing material should be addressed to Publishers Company, Inc., Mr. Robert E. Baeuerlein, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036, Phone (202) 223–4200.

Senator HRUSKA. Mr. Anderson, on the final page of your statement you have this reference to Mr. Kleindienst: "He helped bring about a settlement experts have denounced as a sham." You have certain immunities here. Are the names of those experts within the immunities you have asserted as being sources that you would like to have protected?

Mr. ANDERSON. No.

Senator HRUSKA. Who are the experts?

Mr. ANDERSON. There have been reference to them. I referred to Mr. McLaren's former special economic assistant, Kenneth Elzinga, of the University of Virginia. He has said that he wasn't consulted but thinks the settlement was, in his words, "A sham and a white-wash." And two outside experts the Government earlier used as witnesses in the case never were consulted about the settlement but both said it was a bad settlement. I don't recall their names, but I am sure their names are in the record.

Senator HRUSKA. What is your opinion of the settlement?

Mr. ANDERSON. I am inclined to agree with ITT's lawyer, Mr. Walsh, who said that the Government had a good case.

Senator HRUSKA. What is your idea of the settlement? The merit of the case is one thing. The terms of the settlement is another, the consent decree, and there were three of them. You have read them.

Mr. ANDERSON. I think it was a bad settlement.

Senator HRUSKA. Do you realize from the testimony of Dean Griswold, who testified before us here yesterday, that the outcome of that consent decree was much more than the Government could have

achieved had it proceeded with litigation to its logical and final conclusion and had won every one of its decisions?

Mr. ANDERSON. I think there is expert testimony to dispute that. May I just interject as part of that answer that, of course, ITT got what it wanted.

Senator HRUSKA. Who did they kill?

Mr. ANDERSON. The one thing that ITT sought was to keep Hartford Fire Insurance. That was the big thing.

Senator HRUSKA. It was? But Mr. Griswold testified that after the divestiture of the other companies which furnished the basis for illegal, anticompetitive situations and on the basis of reciprocity, upon the divestiture of those five corporations there was no legal ground upon which any court would hold that ITT had to divest itself of Hartford.

The basis for the reciprocity was gone. You can have your opinion as to the difference in that, but I do believe that Mr. Griswold has practiced law much longer than you.

Mr. ANDERSON. Senator, ITT was warned by the Antitrust Division not to go ahead with the acquisition of Hartford Fire. When they did it I think they did it at their own risk. When the Justice Department let them get away with it, it was a mistake.

Senator HRUSKA. But the Government sued them on two other cases and the district court ruled in favor of ITT, an item that you didn't mention earlier in your testimony.

Mr. ANDERSON. The Hartford Fire case, which was the one I just mentioned, did not go to trial.

Senator HRUSKA. It did not go to trial, but they were denied an injunction and they could not appeal that ruling. The case was set for trial at a later time. Those are some of the things—

Mr. ANDERSON. The case was settled. ITT was allowed by the Justice Department to keep Hartford Fire. There is no dispute about that.

Senator HRUSKA. Exactly.

Mr. ANDERSON. That is the only point I wanted to make.

Senator HRUSKA. But the ground for that suit disappeared when those five corporations were divested. We will leave that to the legal experts and the record as it was very excellently developed by Mr. Griswold.

Mr. Anderson, I refer now to page 1 of your testimony which says that, "While denying this accusation that was not made, the Attorney General designate acknowledged virtually every charge I did make."

What charges did you make against Attorney General-designate Kleindienst?

Mr. ANDERSON. We went through this this morning but I will be glad to repeat them.

Senator HRUSKA. Our time was cut off before you completed reading whatever you were reading. Would you like to answer question?

Mr. ANDERSON. Yes. I will answer it to the best of my ability. The charge that I made was that the Attorney General-designate Richard Kleindienst had held a series of meetings with the ITT Director Rohatyn. I mentioned his name. I identified him. I said he had been empowered by the president of ITT to seek a settlement in this case.

I further quoted him as saying that he had held negotiations, and I emphasized the word "negotiations," that he had participated in the negotiations. He used two words, "negotiation" and "presentation" of the case. We quoted in that column, we quoted what Felix Rohatyn had told us. We said there was a series of meetings. Both Mr. Rohatyn and Mr. Kleindienst testified before this committee that the series of meetings we described had been held.

Senator HRUSKA. What further charges did you make?

Mr. ANDERSON. That is the basis of it.

Senator HRUSKA. But you refer here to "He acknowledged virtually every charge I did make." Is that the extent of your charges?

Mr. ANDERSON. Those were the basic charges we made. We said that when he had previously written that the Justice Department's Antitrust Division had negotiated and handled the case exclusively that he lied. Those are the two charges we made. We did not make the charge that he came in here and denied. He came in here and with great righteous indignation denied that he had had anything to do with arranging the \$400,000 commitment. That was a charge he was perfectly safe in denying because nobody had ever made it. It was not made in the memo that we had or published. It was not made by Mrs. Beard in her conversations about that. It was not made in the column.

The CHAIRMAN. We will have to recess until after the rollcall on the floor.

(A brief recess was taken.)

Senator HART (presiding). The committee will come to order.

The chairman has asked that we resume and he will join us very shortly.

I confess I do not recall who was using time when we were interrupted for the rollcall vote.

Senator HRUSKA. Mr. Chairman, it was I. I have only 4 minutes of my 10 minutes left.

Mr. Anderson, before we recessed for the vote, I had asked you to enumerate every charge that you had made against Mr. Kleindienst and you gave a reply. I wondered if there was anything that you wanted to add to that so it would be sure to have a list of every charge you have made.

Mr. ANDERSON. I think the best way to respond is to put the entire column that I wrote in the record. It is available for that if you would like to have it in the record. Or I will read it to you.

Senator HRUSKA. What column is it and what day?

Mr. ANDERSON. It is the column that was for release March 1.

Senator HRUSKA. When was it printed locally so that we can have a point of reference?

Mr. ANDERSON. So far as I know, it was published on March 1.

Senator HRUSKA. And does that column and that publication contain every charge that you have made against Mr. Kleindienst?

Mr. ANDERSON. Well, all except those that I may have added to in the statement today.

Senator HRUSKA. All except those what?

Mr. ANDERSON. Except those that I made in my formal statement today. Those are a matter of record. I spoke about—

Senator HRUSKA. I thought you discussed principally the things you did not charge against him. The statements in the March 1 Wash-

ington Post are charges that you make against Mr. Kleindienst, is that correct?

Mr. ANDERSON. To the best of my recollection, those are the only charges I have made up until my formal statement today.

Senator HRUSKA. So that we can all understand that what is set out here is a charge against Mr. Kleindienst made by you, is that the way we can understand this column?

Mr. ANDERSON. Well, I made certain charges; yes. Mr. Kleindienst responded to them by asking for this hearing.

Senator HRUSKA. I can't quite get this straight. I asked you to list or enumerate every charge you made so that we could match it up against your statement that Mr. Kleindienst has admitted or has acknowledged every one of those charges.

Mr. ANDERSON. I don't know how to respond to that, Senator. If you will help me, I will try.

Do you want me to read the column? You indicated earlier that you didn't want me to read the column.

Senator HRUSKA. I will take the column and ask that it be put in the record at this point so that we will know which of the columns we are discussing. I want to know from you if this column contains every charge.

Senator HART. Without objection, the columns will go in at this point.

(The full texts of the columns supplied by Mr. Anderson follow:)

[From United Feature Syndicate, Inc., for release Tuesday, Feb. 29, 1972]

JACK ANDERSON MERRY-GO-ROUND—MEMO SHOWS A MITCHELL "FIX" IN ITT CASE; ITT, IN RETURN, PLEDGED \$400,000 TO GOP; ITT PUTS SUPPORTING EVIDENCE IN SHREDDER

By Jack Anderson

WASHINGTON.—We now have evidence that the settlement of the Nixon administration's biggest anti-trust case was privately arranged between Attorney General John Mitchell and the top lobbyist for the company involved.

We have this on the word of the lobbyist herself, crusty, capable Dita Beard of the International Telephone and Telegraph Company. She acknowledged the secret deal after we obtained a highly incriminating memo, written by her, from ITT's files.

The memo, which was intended to be destroyed after it was read, not only indicates that the anti-trust case had been fixed but that the fix was a payoff for ITT's pledge of up to \$400,000 for the upcoming Republican convention in San Diego.

Confronted with the memo, Mrs. Beard acknowledged its authenticity. The next night, badly shaken and acting against the wishes of ITT officials who wanted her to leave town, she met with my associate Brit Hume at her home to try to explain the document.

By this time, she said, ITT security officers from company headquarters in New York had put most of her office files through a document shredder to prevent their being subpoenaed after disclosure of the memo.

Although the memo suggests otherwise, Mrs. Beard insisted that her deal with Mitchell was unrelated to her company's pledge of cash for the GOP convention.

She said she met with Mitchell at the Governor's mansion in Kentucky during a dinner reception given by Republican Gov. Louie Nunn last May after the Kentucky Derby.

She said Nunn, an old personal friend, had tipped her in advance that Mitchell, whom she had never met, would be present. Nunn suggested it might be a chance to discuss the anti-trust litigation, she said.

THREE SUITS PENDING

At the time, there were three Justice Department suits pending which sought to strip ITT of several of the major companies it had acquired on the way to

becoming one of America's largest conglomerate holding companies. Two billion (B) dollars hung in the balance.

Mrs. Beard said she had mentioned the upcoming meeting with Mitchell to E. J. Gerrity, Jr., ITT's public relations chief. Just before the Kentucky Derby, she said, Gerrity told her over the phone what to bargain for with Mitchell on the anti-trust matter.

At the governor's reception, she said, Mitchell took her and Nunn aside and to her astonishment and shock, launched into an hour-long diatribe against her. He criticized her for putting pressure on the Justice Department through Congress and the White House on the antitrust cases.

She said Mitchell knew all about how she had inspired pro-ITT speeches on the House and Senate floors. The Attorney General chastised her for using such tactics instead of meeting directly with him.

"Why didn't you come see me?" she said he asked. Mrs. Beard also quoted Mitchell as saying he had gotten pressure from President Nixon to "lay off ITT." She later softened her version of the President's instructions to: "Make a reasonable settlement with ITT."

She said Mitchell confided to her he was sympathetic to ITT but had been prevented until then from helping the company because of the zeal of the Justice Department's anti-trust chief, Richard McLaren.

After his harangue, Mrs. Beard said, Mitchell agreed to discuss the anti-trust matters and asked bluntly, "What do you want?", meaning what companies did ITT most want to keep if the anti-trust cases were settled.

"We have to have Hartford Fire because of the economy," Mrs. Beard recalled saying. (ITT had acquired the huge Hartford Fire Insurance Company in 1969 in the largest merger in corporate history.)

She said she also told Mitchell ITT wanted to keep "part of the Grinnell Corporation," a manufacturing concern. She said Mitchell at first replied, "You can't have part of Grinnell," but he subsequently relented.

And, she said, when the Justice Department announced its settlement with ITT on July 31, more than two months later, it conformed to the agreement she had made with Mitchell.

Mrs. Beard insisted the subject of the GOP convention never came up with Mitchell and was never a factor in the anti-trust matter. But this clearly contradicts her memorandum, which was written about six weeks after the Kentucky Derby dinner.

It is addressed to W. R. (Bill) Merriam, head of ITT's Washington office. It is marked "Personal and Confidential" and its last line asks, "Please destroy this, huh?"

This memo warns Merriam to keep quiet about the ITT cash pledge for the Republican convention. "John Mitchell has certainly kept it on the higher level only," the memo says, "we should be able to do the same. . . ."

"I am convinced, because of several conversations with Louie (Governor Nunn) re Mitchell that our noble commitment has gone a long way toward our negotiations on the mergers coming out as Hal (ITT President Harold Geneen) wants them.

"Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering. . . ."

"If (the convention commitment) gets too much publicity, you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known."

Footnote: Mitchell would not talk to us but John Hushen, a Justice Department spokesman, told us there was "no truth" to Mrs. Beard's story. Hushen conceded, however, that Mitchell had spoken to Mrs. Beard at the governor's reception. Nunn claimed to know nothing about the anti-trust case or the convention commitment. Richard McLaren, now a federal judge in Chicago, said he was under no pressure from above in planning and negotiating the settlement.

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[From United Feature Syndicate, Inc., release Thursday, Mar. 2, 1972]

JACK ANDERSON MERRY-GO-ROUND—KLEINDIENST LIED ABOUT ROLE IN ITT 'FIX'; ITT DIRECTOR ADMITS MEETINGS WITH DEPUTY; MITCHELL GIVEN CHANCE TO EXPLAIN, DOESN'T

By Jack Anderson

WASHINGTON.—We have now established that Attorney General-designate Richard Kleindienst told an outright lie about the Justice Department's sudden out-of-court settlement of the Nixon Administration's biggest anti-trust case.

The case involved the International Telephone and Telegraph conglomerate, which appeared on the way to a Supreme Court showdown with the Justice Department over ITT's takeover of the huge Hartford Fire Insurance Company.

Last July, however, the case was abruptly settled. The terms, considered highly favorable to ITT, were announced at the same time ITT secretly pledged up to \$400,000 to support the Republican convention in San Diego this year. A check for \$100,000 has already been written.

Denying any connection between the convention cash and the anti-trust settlement, Kleindienst insisted that the Justice Department's anti-trust staff had been free from any political pressure from above.

"The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren (then head of the anti-trust division)," Kleindienst said in a letter to Democratic National Chairman Larry O'Brien.

However, we have now learned that Kleindienst himself held roughly a half-dozen secret meetings on the ITT case with a director of the company before the settlement was reached.

The director, Wall Street financier Felix Rohatyn, conceded to us that he met in private with Kleindienst, who was then Deputy Attorney General, at the same time McLaren was negotiating with ITT's lawyers.

"I was supposed to make the case on the economic side of it," Rohatyn told my associate Brit Hume. He said he particularly stressed to Kleindienst ITT's arguments for keeping Hartford Fire.

KLEINDIENST DUPLICITY

Kleindienst's duplicity is further evidence that the Administration has much to hide in the ITT affair, which looks more suspicious the more we investigate it.

Not only Kleindienst, but his boss, outgoing Attorney General John Mitchell, has not been linked to the settlement. Mitchell had officially disqualified himself from the case because of an old relationship with ITT. Yet Dita Beard, the company's top lobbyist, has now acknowledged that she arranged the settlement with Mitchell in a private conversation at the governor's mansion in Kentucky after last year's Kentucky Derby.

Her confession came after we obtained an extraordinary confidential memo, written by her, from ITT's files. The memo suggested strongly that the settlement was made in exchange for ITT's pledge of cash support for the Republican convention.

Mrs. Beard also told us that the day after we confronted her with the memo, ITT security men from New York shredded many of her office files because they feared the papers might be subpoenaed when the memo became public.

Mitchell would not discuss the matter with us. John Hushen, a Justice Department spokesman, told us there was "no truth" to Mrs. Beard's story. He acknowledged, however, that Mitchell had spoken to Mrs. Beard at the governor's mansion.

We gave Hushen specific questions to ask the Attorney General. But four hours later, after conferring with Mitchell, he called us back without the answers.

Instead, he urged that we withhold our story on Mrs. Beard's version of events until, as Hushen put it, "we get all our ducks in a row." He said Mitchell would "prove" the falsehood of Mrs. Beard's incriminating memo, but three days later, no proof had appeared.

BIG REPUBLICAN NAMES

The June 25, 1971, memo is studded with such big Republican names as President Nixon, Mitchell, California Lt. Gov. Ed Reinecke, San Diego Congressman Bob Wilson, White House aide Bob Haldeman and H. S. (Hal) Geneen, ITT's president.

It is addressed to W. R. (Bill) Merriam, manager of ITT's Washington office. "I thought you and I had agreed very thoroughly that under no circumstances would anyone in this office discuss with anyone our participation in the Convention including me," Mrs. Beard wrote.

"Other than permitting John Mitchell, Ed Reinecke, Bob Haldeman and Nixon (besides Wilson, of course) no one has known from whom that 400 thousand commitment had come . . . John Mitchell has certainly kept it on the higher level only, we should be able to do the same . . ."

"I am convinced because of several conversations with Louis (Nunn) re Mitchell that our noble commitment has gone a long way toward our negotiations on the mergers eventually coming out as Hal (Geneen) wants them. Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering . . ."

"If (the convention cash) gets too much publicity you can believe our negotiations with Justice will wind up shot down. Mitchell is definitely helping us, but cannot let it be known. Please destroy this, huh?"

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[From United Feature Syndicate, Inc., release, Friday, Mar. 3, 1972]

JACK ANDERSON MERRY-GO-ROUND—MITCHELL, ITT TRY TO LIE WAY OUT OF SCANDAL; CALIFORNIA COLLEAGUES SAY MITCHELL KNEW ALL; ITT'S STATEMENT CONTRADICTS EVIDENCE ON HAND

By Jack Anderson

WASHINGTON.—The Justice Department and International Telephone and Telegraph are now trying to lie their way out of a scandal over the suspicious, sudden settlement of a landmark anti-trust suit against ITT.

In earlier columns, we disclosed a remarkable ITT memo indicating the Justice Department granted the favorable settlement in exchange for cash support of the upcoming Republican convention in San Diego.

The author of the memo, ITT lobbyist Dita Beard, told us she arranged the settlement herself in a private conversation with Attorney General John Mitchell at a Kentucky dinner party.

Mitchell refused to talk to us. A spokesman, John Hushen, urged us to withhold our story until he could "get our ducks in a row." He then waited three days before calling us back with a terse statement from Mitchell.

The statement says the Attorney General "was not involved in any way with the Republican National Committee convention negotiations and had no knowledge of anyone from the committee or elsewhere dealing with International Telephone and Telegraph."

This is false. In mid-May last year, California Lt. Gov. Ed Reinecke and an aide, Edgar Gillenwaters, met with Mitchell in his Washington office to discuss efforts to hold the convention in San Diego.

MITCHELL MISLEADS

We could not reach Reinecke, but Gillenwaters told us he and Reinecke personally informed Mitchell that ITT had offered to put up as much as \$400,000 to support a GOP convention in San Diego.

"He liked the idea of (having the convention in) San Diego," Gillenwaters said of Mitchell. "He didn't need any persuading. He said, 'If you can do it, more power to you.'"

ITT also issued a statement on the matter which insisted that only its lawyers were authorized to deal with the Justice Department on the anti-trust cases. "Neither Mrs. Beard nor anyone else except legal counsel was authorized to carry on such negotiations," the statement said.

This is also false. Felix Rohatyn, an investment banker and director of ITT, told us he held a series of about a half-dozen secret meetings during the merger negotiations with Deputy Attorney General Richard Kleindienst. Rohatyn said he was specifically authorized to "make the case on the economic side" by ITT President Harold S. Geneen.

Rohatyn's acknowledgment also puts the lie to an earlier statement by Kleindienst, who has now been named to replace Mitchell as Attorney General. On December 13, Kleindienst wrote to Democratic National Chairman Larry O'Brien

to deny that high-level political pressure had been exerted on the Justice Department's anti-trust staff in the ITT case.

"The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren (then head of the anti-trust division)," the Kleindienst letter said.

Obviously, if Kleindienst was holding secret talks with Rohatyn on the case, it could not have been "handled and negotiated exclusively" by McLaren and ITT's lawyers.

Mr. ANDERSON. To the best of my recollection, I have never made charges against Mr. Kleindienst other than those in this column and those that I made in my formal statement this morning.

Senator HRUSKA. It is your position that he has acknowledged every charge that you made against him?

Mr. ANDERSON. Yes; every charge I made in the column.

Senator HRUSKA. Every charge what?

Mr. ANDERSON. It is my position that he has acknowledged the charges that I made in the column.

Senator HRUSKA. In the column? That is not what your statement says, "The Attorney General Designate acknowledged virtually every charge I did make."

Mr. ANDERSON. That was the only place I made them up until I made that statement.

Senator HRUSKA. In this column of March 1?

Mr. ANDERSON. Yes.

Senator HRUSKA. Very well. I have just one other question. You said Dita Beard did not give you that memorandum?

Mr. ANDERSON. That is correct. She did not.

Senator HRUSKA. Did she give it to Mr. Hume?

Mr. ANDERSON. She did not.

Senator HRUSKA. Did she give it to any member of your organization?

Mr. ANDERSON. She did not. I got the memo but not from Dita Beard.

Senator HRUSKA. Do you know to whom she gave it?

Mr. ANDERSON. I know only that it was addressed to her superior, Mr. Merriam.

Senator HRUSKA. But you don't know to whom she gave it?

Mr. ANDERSON. I say I know it was addressed to William Merriam and she told Mr. Hume, as Mr. Hume has testified, that Merriam had said to her that he had seen it but had mislaid it.

Senator HRUSKA. Thank you very much.

That is all I have.

Senator HART. The Senator from Indiana.

Senator BAYH. Mr. Anderson or Mr. Hume, which one of you gentlemen talked to Mr. Gillenwaters?

Mr. ANDERSON. Mr. Hume did.

Mr. HUME. I did.

Senator BAYH. Can I ask you to go through that experience once again so we may have a better idea about his credibility, the same as I asked you to give us your judgment of the credibility of Mrs. Beard?

Mr. HUME. Yes, Senator.

Mr. Reinecke is mentioned in the memorandum of Mrs. Beard's and also his being mentioned in my conversation with him at her home led me to try to reach him over the weekend of the 26th and 27th, I believe. I couldn't get any response out there except from the State police and I was not able to get a call returned from Mr. Reinecke

until late Monday when Mr. Gillenwaters called me back. Then it was too late for me to talk to him. I was busy with other things.

I finally spoke to him on Tuesday morning when he again called. It was about a quarter to 12, I think. I was working on the column, material that we were using in the column that was going to be published on Friday. I was trying to place the date of the meeting that Mr. Reinecke had with Mr. Mitchell that Mrs. Beard had mentioned to me.

It seemed to me to be significant to find out whether or not the Attorney General had been informed of the \$400,000 offer commitment before the settlement of the cases. So I was quite eager to get Mr. Reinecke's version of events and somewhat disappointed that I was not able to reach him personally.

However, as it turned out, Mr. Gillenwaters had been at the meeting in question. When I spoke to Mr. Gillenwaters he had no problem with his memory at all. Mr. Reinecke in the statement that he issued, as I saw it, and I may have gotten a garbled copy of it, I understand that he claimed the difference between what Mr. Gillenwaters and he, himself, had said on the fact he was trying to remember something when he was out of town and away from his files.

Mr. Gillenwaters was in Sacramento when he spoke to me and had a very clear recollection of it. The first thing he tried to make clear to me was that no antitrust matters had been discussed, that the ITT case hadn't come up at all, but it was a conversation about the convention.

I quizzed him about what the Attorney General's attitude toward having a convention in San Diego was, and he indicated that the Attorney General was somewhat skeptical of the prospect because members of the San Diego City Council had apparently expressed some dismay at the idea.

One of the things Mr. Gillenwaters said was quoting the Attorney General as saying, "If you can get it out there, more power to you." He said the Attorney General liked the idea of San Diego and he didn't need any persuading to come around to the view that having it in San Diego was a good idea.

I said, "Well, then, did you tell him about the ITT commitment?" And he made a distinction between ITT and Sheraton and said they discussed it more in terms of ITT-Sheraton than ITT, but, nevertheless, he said, "You bet," when I asked him if indeed the Attorney General had been informed of this willingness, as Mr. Gillenwaters described it, of ITT-Sheraton "to stand in for the \$400,000, if necessary."

"You bet," he said. It was clear to me from that conversation, or it seemed clear to me, anyway, that this must have been a conversation that occurred before the August meeting in Denver, in which the convention site was selected.

Mr. Reinecke, as you know, has come out and said the only time he discussed the convention with the Attorney General was in September. If that is true, it seems very unlikely that the conversation that Mr. Gillenwaters described to me could ever have occurred because it would have been totally illogical for Mr. Gillenwaters or Mr. Reinecke to be sitting around in Mr. Mitchell's office in September speculating about whether or not the convention was going to be in San Diego when in fact it being in San Diego was already sewed up.

But, that is the way Mr. Gillwaters described it to me. I understand Mr. Reinecke gave virtually the same version of events to Robert Walters of the Evening Star and Ben Shore on Thursday evening of that week, which would have been—it was the week of March 1.

I think it would have been March 2 that they spoke to him by phone, both of them separately from here. I understand now that Senator Tunney had a similar conversation with him.

Senator BAYH. Was anything said relative to how these moneys were going to be used? For what purpose?

Mr. HUME. We didn't get into that. I had pretty well satisfied myself as to just exactly the nature of the commitment and how it was regarded by the people in San Diego. The Republican fellow I spoke of, Mr. Parma, had insisted that the fund raising was going so well that they hoped they wouldn't need the money, but I had already clarified it as well as I thought necessary how the money was expected to be used so we didn't go into that.

Senator BAYH. Are you familiar with the letter that was introduced into the record here by Senator Hruska written to Mr. Strauss from Sheldon Cohen on September 1, 1971, relative to the sale of ads in the program for the 1972 Democratic National Convention?

Mr. HUME. No, I am not familiar with that.

Senator BAYH. This letter was introduced, the way I recall it, earlier today as support for the Justice Department's announced position as of January this year that the type of contribution that has been the subject of debate here is legal. I am glad the Senator from Nebraska is here because I don't want in any way to misinterpret or misconstrue the purpose of putting the Cohen letter in.

Senator HRUSKA. The letter was put in for the purpose of showing what the letter said and who signed it. It was not in support of anything. It stands on its own feet and for its own purposes.

Senator BAYH. Then perhaps I should read some of the pertinent parts of it to show that some people might notice it was put in in close proximity to the letter from the Justice Department and think that both of them were trying to prove the same point.

As you pointed out in your statement, when I asked Mr. Kleindienst to comment on whether the law which says "it shall be unlawful for any corporation whatsoever, or any labor organization, to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors are to be voted for or in connection with any primary election or political convention," and so forth, the Attorney General-designate would not comment on that and said, as I recall, it has been done by both parties so we sort of have to let go, accept it as acceptable.

The Cohen letter, to the contrary, about these contributions that seem to be an inticement to the party to come to San Diego, says as follows:

Amount paid or incurred for advertising in a convention program of a political party distributed in connection with the convention are deductible for Federal income tax purposes . . .

and here I think is the important part for us to consider:

If the proceeds derived from the program are used only to defray the cost of conducting the convention or a subsequent convention. . . . And further, nor will any amount paid for advertising be considered reasonable if it exceeds the

amount which would be paid for comparable advertising in a comparable convention program for a nonpolitical organization.

Do either of you gentlemen have any information relative to what other similar corporations have appraised as the value of this kind of advertising in the next convention? It seems to me that \$400,000 is quite a chunk of cash to attribute to advertising for a convention.

Mr. ANDERSON. I don't know the figure, Senator, but that was my impression, that \$400,000 was a huge sum and went far beyond just the normal political convention contribution.

Senator BAYH. As you may recall, Mr. Anderson, when I was discussing this with Mr. Rohatyn, he said although ITT parent board of directors was not familiar with details like this, that it was common practice to use funds like this as advertising. So it seems to me that one of the things we need to search for is what is a reasonable amount that a corporation like this to be expected to invest or expend pursuant to the statutory prohibition to provide advertising or cash in lieu of advertising to the convention.

Mr. ANDERSON. I do know a little about advertising since I am in the newspaper business and I wouldn't pay \$400,000 for an ad in the convention program.

Senator BAYH. I might read, or ask to be put into the record, an article from the Los Angeles Times on March 9, which gives at least some idea—perhaps Senator Tunney can speak with more authority since he is from that part of the country.

Here in the Times it goes as follows under a San Diego by-line: "San Diego's largest hotel operator said Wednesday that his firm's contributions for the Republican Convention will be about \$24,000, much less than the controversial amount pledged by International Telephone & Telegraph Corp. hotel subsidiary. C. Terry Brown, president of Atlas Hotels, Inc., said, 'I think it, the convention, is the greatest thing that ever happened to San Diego. But 24,000 bucks is enough.'"

I don't know whether there is any relevance between that and ITT's \$400,000 investment.

(The document referred to follows:)

[From the Los Angeles Times, Mar. 9, 1972]

TOP SAN DIEGO HOTELMAN TELLS OF \$24,000 AID

(By Bill Boyarsky)

SAN DIEGO.—San Diego's largest hotel operator said Wednesday that his firm's contribution for the Republican National Convention will be about \$24,000—much less than the controversial amount pledged by an International Telephone & Telegraph Corp. hotel subsidiary.

C. Terry Brown, president of Atlas Hotels, Inc., said, "I think it (the convention) is the greatest thing that ever happened to San Diego" but "24,000 bucks is enough."

Brown's statement came in response to a question by a reporter seeking to find what other hotels contributed to the convention. Brown spoke as ITT continued to say that it had advanced \$100,000 in cash, and promised much more, to help promote its hotel business—not to help settle a huge antitrust suit.

FINANCIAL ANGEL

An ITT subsidiary, Sheraton Corp., is a financial angel for the San Diego civic effort to raise money for the convention. The firm says it has offered to underwrite \$200,000 of the local convention costs.

A Senate committee is investigating a memo suggesting a link between the convention money and the Justice Department's settlement of a huge antitrust suit against ITT.

Defending ITT, San Diego Convention officials said the firm offered to underwrite the convention because Sheraton has two hotels here and is building a third. Rep. Bob Wilson, San Diego Republican, quoted ITT President Harold S. Geneen as saying the contribution would help put the new hotel "on the map."

OTHER EVENTS

There were these other developments in San Diego Wednesday:

A massive local fund-raising drive that started a few days ago to raise the money guaranteed by ITT was disclosed. One of those in charge was Frank Thornton, chief political fund-raiser for C. Arnholt Smith, wealthy businessman and Republican Party power.

Local convention committee officials again refused to disclose donors' names. "We would not give the names out," said Phil Phillips, committee spokesman.

Leon Parma, executive director of the local civic committee, refused for the third straight day to answer reporters' questions about the controversy.

Apparently Sheraton was the only local hotel operator that felt such a large financial stake was needed for promotional purposes.

CALLED BIGGER

Brown, in the interview, said his hotel operation here was bigger than Sheraton's. His Atlas Hotels operate the Town and Country Hotel, the Hanalei Hotel, the Mission Valley Inn and the Kings Inn, all in the hotel circle area of Mission Valley.

All told, Atlas has 1,325 rooms in San Diego, compared with about 1,150 he said Sheraton will have when it completes its new hotel by convention time next August. No hotel operator has more rooms in San Diego.

But Brown said he believed that the \$24,000 his firm was giving for its assessment to the Convention and Visitors Bureau, which has pledged \$100,000 is enough.

Brown said he had been told that the reason "Sheraton was going to come up with the \$400,000 (sic) was that they were going to move their corporate headquarters to San Diego."

Brown made it clear that he was convinced that San Diego would be able to raise enough money from local sources without having to rely on the great majority of the Sheraton money.

Mr. ANDERSON. It is my impression that ITT was willing, if necessary, to subsidize the convention in order to get into San Diego, as I understand it, in order to please the President who wanted to go there; that ITT was willing to subsidize the convention up to \$400,000, but that it was the hope that they would get a lot of smaller contributions and make it unnecessary for ITT to have to put up that amount of money.

Senator BAYH. To your knowledge, none of these moneys, none of this \$400,000, was to be used to procure advertising in a program book?

Mr. ANDERSON. It was intended, I think, to make sure that the convention—well, it was a pledge, a commitment, to insure that the convention come there.

Senator BAYH. I think my 10 minutes are up.

Senator HRUSKA. Would the Senator from Indiana yield long enough to permit me a comment? There is some inference in the question and the answer given that the whole case is on the base of the Sheldon Cohen letter. It is not so. There is this other opinion. There is the practice of both national parties to accept contributions and advertising. It is not only a matter of advertising. All of the documents constitute the whole picture that should be portrayed, not only one letter standing by itself.

Senator BAYH. I don't want to give the wrong inference. The Cohen letter speaks for itself. The date of the Justice Department opinion, January of this year, I think, speaks for itself, plus the fact that I don't know if the gentleman from Nebraska can shed some light on this but if both parties are accustomed to shopping around for conventions——

Senator HRUSKA. Then you haven't read the newspapers every 4 years when that painful process goes on. There is high competition among a half dozen cities.

Senator BAYH. I am sure that is the case. I have never been intimately involved with the exchange of moneys or the pledging. Does the Senator know of any other corporation that has made this kind of a pledge in pursuit of a convention location?

Senator HRUSKA. I don't know that this one has. I know of some unsupported conversations which would never see the light of day in either a prosecuting attorney's office or in a court of law where either a civil case or criminal case would be tried with this issue before it.

But I think that is beside the point. These letters were brought in here to show that contributions of this kind by corporations are not a crime as was stated by the principal witness here today. His was a flat, unqualified statement. These exhibits prove that that is not true. I would consider them a much higher degree of competence of evidence than the statement contained in the written statement of Mr. Anderson.

Senator BAYH. With all respect to my friend and colleague from Nebraska, I don't know who prepared this opinion that he put in the record. I am glad he put it in the record, but I have a good deal of confidence in his legal judgment. I wish when he gets a moment or two he might read the words of section 610 of title 18, United States Code. Then I would like to have the Roman Hruska legal version of what that says because words are words and they are pretty plain.

Senator HRUSKA. In this opinion of the Chief of the Fraud Section of the U.S. Department of Justice—and he has been there for many years, he is a career man—he says, “This is in response to your letter of January 3 with respect to the applicability of section 608, 610 and 611, title 18,” and he goes on from there. And he differentiates a political purpose from that of a commercial project, which it is from the standpoint of people who sell meals, rooms, services, taxicabs and what have you. That is what his opinion says. If you have a memorandum that has no signature to it, maybe you could get the signature and put it in.

Senator BAYH. I would like to have Roman Hruska's version because I respect your competence. With all respect to Mr. Keeney, the wording of the statute is pretty plain.

My time is up.

Senator SCOTT. Would the Senator yield for an observation?

Senator HART. We have no time but we will recognize the Senator from Pennsylvania. He is next in order, in any event.

Senator SCOTT. I am luckier than I thought I would be. I just wanted to make an observation because we are going so far afield here that I think this particular incident has to be revealed at this time.

I, along with others, had a meeting with Mr. Hermann, chairman of the arrangements committee of the Republican National Com-

mittee; with Mr. Strauss, the treasurer of the Democratic National Committee, and others, during which meeting it was made clear that both parties have received opinions. I assume from their counsel, opinions from a sufficiently high level, to convince them that corporations may make contributions and that both parties intend to solicit and receive contributions for advertising in their campaign production or program.

It is my understanding, and I think we could ask counsel for the Republican and Democratic National Committees if this is not so, that they have also given their opinions or are prepared to do so that contributions may be made by corporations to cities seeking to obtain selection of their local for national conventions. We have been talking as if the Democratic National Committee and the Republican National Committee didn't hold any meetings. I would like to tell you we are holding enough of them and they are quite amiable from time to time.

I yield the rest of my time to Senator Cook.

Senator HART. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Mr. Anderson, I was asked out in the hall if I brought up all of those other things because somehow or other this might constitute a red herring. It wasn't a red herring on my part. It was your decision in writing your column to use the phrase that Richard Kleindienst did lie.

The only point I was trying to make was that when you said Mr. Rumsfeld had a bedroom and a new bathroom, you said that those things were in error. That wasn't really error on the part of you or your organization. You lied about it. When you said, for instance, on June 8, that there was no release on the fact that Admiral Moore was going to Spain when in fact there was a release that was made, and it was clear that it was made and it was printed and distributed to the news media. It wasn't an error. You said something that was just a bold-faced lie.

That was the point I was trying to make. It wasn't a matter of trying to throw out a red herring. It is a matter that sometime everybody falls in that kind of a category. All of us are not immune from it.

Mr. ANDERSON. I would like to make this distinction: The error that I made, and it was an error on Mr. Rumsfeld, on the location of Mr. Rumsfeld's refurbishment—though, as I said, we had the blueprints on the one, and he never went ahead so we may have saved the taxpayer some money by printing the story——

Senator COOK. Did you ever retract it?

Mr. ANDERSON. I went over to see Mr. Rumsfeld and he urged me not to. He begged me not to. He said it would bring it up again and so in deference to him I didn't.

Senator COOK. I must say in all fairness, I have been reading your columns for a long time, and I mean a long time, and I can't recall reading any retractions.

Mr. ANDERSON. I will be glad to supply you with retractions we have made. We always do it.

If I can finish my point, there is quite a difference, Senator, between a mistake that we honestly make. When we heard from Mr. Rumsfeld's office that they had another day to go to complete the renovations, we reported what we believe to be true. Richard Kleindienst deliberately told a lie. He knew better when he made his statement.

Senator COOK. That is a matter of opinion, whether you thought what you were writing was true. That is the difference between your opinion and mine.

In your statement that you prepared this morning, almost your entire statement is based on the testimony that has already been given. Starting on page 8, for some reason or other you want Dr. Liszka brought back here. What could you elicit from Dr. Liszka that we can't get from Mrs. Beard?

Mr. ANDERSON. I think that witnesses before your committee ought to be responsible for what they say. He made some statements that weren't true. I think you probably ought to get those cleared up.

Senator COOK. On your basis they are not true?

Mr. ANDERSON. Yes.

Senator COOK. But he was under oath and he feels that they were true.

Mr. ANDERSON. I think there is some doubt about that. He told the New York Times that he left out information, that he had deceived the committee because he thought it was negative information.

Senator COOK. Do you know why Dr. Liszka came here, the purpose for which he came? Let me tell you why he came. He came because he wanted to advise the committee when he thought in his medical judgment Mrs. Beard could come before this committee. That was the only reason. It was this Senator that tried to tell the members of this committee that somehow or other they could put this gentleman in jeopardy, that he could be put in jeopardy on all of this because of the doctor-patient relationship, not only under his own code of ethics but under the law of the State of Virginia. That meant nothing.

But now as a result of the fact that they went into that, in your statement you not only go into the fact that he, in your opinion, lied and he ought to be brought back, but that his wife has been under investigation, that evidence will now be submitted to the grand jury in Arlington, Va., next week, as to whether she violated the law.

The implication in your statement is that somehow or other this great big Justice Department came down and said, "Come on now, we want to take care of you."

I want to suggest that if they wanted to take care of him, his wife's case wouldn't be submitted to the grand jury next week, I wouldn't think. Why is it necessary to take a doctor who came here for the purpose of saying when Mrs. Beard could come before this committee and testify and all of a sudden he is a key figure who has lied. He is a key figure who is now before the entire national news media, and you and probably your column in the future. Somehow or other as a part of his practice he happened to do some physical examinations for Hamilton Life Insurance Co. that was a subsidiary of ITT? Maybe he did it for Metropolitan Life Insurance Co., maybe for Prudential Life Insurance Co. But in your eyes this makes him a crook and he ought to come here and——

Mr. ANDERSON. To the best of my recollection, Senator, he testified before the committee that he had had no relationships before the ITT and when a man says that——

Senator COOK. Do you think he knew that Hamilton Life belonged to ITT? Until these hearings started, this Senator didn't know it.

Mr. ANDERSON. I think it is called ITT-Hamilton Life.

Senator COOK. I think it is called Hamilton Life Insurance Co. As a matter of fact, it is a subsidiary of Levitt, and it is not an ITT subsidiary. It is a subsidiary of Levitt & Son and Levitt & Son stock is owned by ITT, the controlling interest. But the stock is issued from Levitt to ITT and Levitt & Son owns the controlling interest in the stock of Hamilton Life.

Mr. ANDERSON. All right, Senator, I will be glad to respond to your question.

Senator COOK. Why is it necessary to do this to the gentleman?

Mr. ANDERSON. May I respond?

Senator COOK. I want to know. I think Mrs. Beard could probably come here and straighten it all out.

Mr. ANDERSON. Let's see who is doing what to this poor doctor. This doctor is a Hungarian refugee. Our experience with him indicates that he is frightened of government. He ran away from a government. Our Government started grand jury proceedings against him. It is our impression—and we can only make impressions on this—that he ran over to the Justice Department because he was frightened of the Government. They took advantage of that. The Justice Department took advantage of him to try to get him to go out and find out what was going on with Dita Beard, to try to produce evidence, to try to make an informer out of him.

Senator COOK. You say the Justice Department sent him to Denver?

Mr. ANDERSON. Yes, I am.

Senator COOK. You are saying that?

The CHAIRMAN. Wait a minute now. I want to clear one thing up. Is it your testimony that the U.S. Government started grand jury proceedings against this doctor?

Mr. ANDERSON. No. My testimony is that grand jury proceedings were in progress against him, at least an investigation before a grand jury hearing, and that he had just been interrogated by the Government, and that the man, because of his background, was frightened of Government.

The CHAIRMAN. There is all the difference in the world between interrogating a man and grand jury proceedings being started against him.

Mr. ANDERSON. I stand corrected in my statement. I am glad you brought that out. My original statement did point out that he was exonerated and that the grand jury proceedings are only against his wife who is practicing jointly with him. I thank you.

Senator COOK. Proceed.

Mr. ANDERSON. So the doctor came here and testified, again before a Government body, and gave the most remarkable, the most extraordinary testimony about his patient, testimony that has gotten him into trouble, in most serious trouble, with his profession.

He did it, I am certain from our own conversations with the doctor, out of fear of Government. I feel sorry for him, but I felt that this episode, because it was part of a pattern of lies that have been told, of coverups that have gone on in this case, I felt that it should be added.

Senator COOK. I yield to the chairman.

The CHAIRMAN. Let's straighten that out. He told me, and he testified, that he was authorized by his patient to testify. That was the only reason I put him on the stand. The patient has the right to authorize doctors to testify. If he is wrong, he has committed perjury.

Mr. ANDERSON. I think he may have and the committee ought to look into that. I think from our conversations with him he said that Dita Beard didn't say he couldn't testify. I think you really ought to examine the authorization that he got. I guess you can best do that when Dita Beard comes before you.

Senator COOK. Really and truly, to bring him back if Dita Beard is going to testify will accomplish nothing; will it?

Mr. ANDERSON. I think you should bring him back, but if the committee doesn't wish to, I am not going to make a big issue of it.

The CHAIRMAN. I think he ought to be brought back.

I would like to ask Mr. Hume a question. What was your judgment, and I think you are intelligent, of Mrs. Beard? Was she telling the truth?

Mr. HUME. Senator, there was really no way for me to be sure of that one way or the other. I had nothing to go on but her memo and the explanation of it which she gave me. All I can say to you, Senator, is that I felt what she was saying was sufficiently coherent, sufficiently detailed, that I did not have the feeling that I was being the victim of a total fake, and that her words deserved to be published as news. I cannot be sure whether she was telling me the truth. I just can't be certain one way or the other.

The CHAIRMAN. The Senator from Massachusetts.

Senator KENNEDY. Mr. Chairman, the Justice Department has provided us with a copy of a letter to Mr. Petersen which led to the answer that Senator Hruska put into the record this morning.

I note that the copy we received had some parts obliterated, up in the top right part. I hope before we place it into the record we can get an unaltered copy of what actually was in the Department's letter.

The CHAIRMAN. There can be an accurate copy prepared.

Senator HRUSKA. The parts are not obliterated.

Senator KENNEDY. Can we get the original of the letter?

Senator HRUSKA. It reads all the way through. There may be an ink stain. There is one in the lower right-hand corner.

Senator KENNEDY. Can you tell us what is under James Knapp, other than a sort of blanked out square?

Senator HRUSKA. In the second paragraph?

Senator KENNEDY. In the top, to the right. I am talking about the Petersen letter, the letter to Mr. Petersen, not the DeMarco letter.

Senator HRUSKA. I don't know about that. Did I put a letter in addressed to Mr. Petersen?

Senator KENNEDY. You put the response in. As I understand this Petersen letter was circulated. As I understand, this letter to Mr. Petersen was provided to us during the lunch hour. It prompted the letter to Mr. DeMarco.

What I would like to try and determine is, if it hasn't been put into the record, to put it in the record in the form which reveals the original markings.

Senator HRUSKA. This is the form in which I received it. I will make an effort to get the original and see if it conforms to this or whether something has been marked out.

Senator KENNEDY. Fine.

I also note, as I mentioned, that the letter is signed by Frank DeMarco for the firm. I point out the partners on the letterhead and note that the first name on the letterhead is Mr. Kalmbach, Herbert W. Kalmbach. I have already placed in the record an article about Mr. Kalmbach entitled "The Covert Collector." There is another article from the New York Times of February 16, 1972, called "Exclusive Coast Club Spurs Gifts of Millions for Nixon and GOP," which makes reference to Mr. Kalmbach and his firm and its relationship to the firm.

(The article referred to follows:)

[From the New York Times, Wednesday, Feb. 16, 1972]

EXCLUSIVE COAST CLUB SPURS GIFTS OF MILLIONS FOR NIXON AND G.O.P.

(By Everett R. Holles, Special to the New York Times)

NEWPORT BEACH, CALIF., Feb. 15. —One of the most bountiful but least known sources of big campaign money for President Nixon is an exclusive club of California businessmen who like to boast that, without their efforts and generosity, he would not be occupying the White House today.

Made up largely of millionaires, the Lincoln Club of Orange County carries not only great political influence but also considerable social prestige in a seaside community where sleek yachts and racehorses abound and the wealthy live in walled beachfront compounds with uniformed guards at the gates.

According to former members who now oppose some of its policies, the Lincoln Club has 124 carefully screened members who pay dues of \$500 a year. They say its affairs are tightly controlled by a handful of Mr. Nixon's personal friends and Orange County neighbors who sit on the board of directors. Prominent in this inner circle are four or five men who, among them, have raised several million dollars for the Republican party.

Because many of the members are directors of large corporations throughout the country, the club serves as a "finder" or point of contact, influence and pressure in obtaining large campaign contributions. The donations—often split into unpretentious \$5,000 segments—are funneled into the party's national treasury through a variety of convenient committees set up for that purpose, in California and in the East.

Several of the Lincoln Club's older figures are original Nixonites who helped launch the President on his political career 26 years ago. They were among a group of old-guard California Republicans who picked him—an obscure young man just out of the Navy—to run for Congress against the Democratic incumbent, Jerry Voorhis. They have been giving generously to his campaigns ever since, in victory and defeat.

The Lincoln Club—it has no headquarters, only a post office box in nearby Fullerton—shuns publicity. Its membership roll is a secret document and its officers refuse to talk with reporters. Each person initiated into the club takes a pledge not to discuss publicly the organization's activities, even though the rank-and-file members know little or nothing about the real scope of those activities. They are not consulted in the selection of favored Republican candidates for state and local office, or the manner in which the club's largesse is distributed.

Since the President took office in 1969, a number of his policies have generated friction in the club. Through resignations there has been a net loss of 20 members, including one board member who was ousted when he demanded an outside audit of the club's financial affairs. Most of those who have resigned are right-wing Republicans critical of Mr. Nixon's decision to visit mainland China and his proposals for a guaranteed annual income and revenue sharing.

From such dissident sources it has been possible to piece together what appears to be a relatively complete picture of the club's internal working, part of it based on minutes of board of directors' meetings dating back several years.

All of the club's decisions, this material makes it clear, are made by the 18-man board, which is presided over by the club's perennial president, Arnold O. Beekman, a 72-year-old founder of Beekman Instruments, Inc., of Fullerton.

Mr. Beckman's right-hand man and adviser at the directors' Saturday breakfast meetings, held each month at the Balboa Bay Club or the Airporter Inn here, is a mild-spoken Newport Beach attorney, Herbert W. Kalmbach. Mr. Kalmbach is President Nixon's personal attorney on the West Coast and No. 2 man on the Nixon national fund-raising team headed by Maurice H. Stans.

The President's brother, F. Donald Nixon of Newport Beach, is a Lincoln Club member and is frequently seen in the company of Mr. Kalmbach at the latter's favorite luncheon spot here, a restaurant called The Quiet Woman. Donald Nixon is an employee of the Marriott Corporation, operator of motels and airline catering services and a client of Mr. Kalmbach's law firm, Kalmbach, DeMarco, Knapp & Chillingworth.

The Lincoln Club's membership is heavily weighted with bankers, land developers and real estate brokers, but there are others outside that category, such as John Wayne, the actor.

In its brief financial reports distributed to members, the Lincoln Club lists political donations to state and county party candidates that usually amount to \$60,000 to \$75,000 a year.

A report dated April 7, 1971, listed receipts for the preceding year totaling \$92,388.45, including \$54,900 in unidentified "contributions." Expenditures of \$78,300.47 were shown, including \$15,000 given to Senator George Murphy in his losing 1970 battle for re-election; \$28,000 to California Congressman William Teague, and \$10,000 to the Ronald Reagan-Ed Reinecke ticket for Governor and Lieutenant Governor in 1970.

But periodic accountings, according to a former member of the Lincoln Club, represent "just the petty cash drawer of the whole operation." Unreported, he said, are large contributions to the Republicans' national campaign chest by individual members. These do not pass through the club treasurer, Robert F. Beaver, but are made directly "ex officio" to Mr. Kalmbach, or, on occasion, to Mr. Beckman.

The former member said that in 1968 he contributed \$24,000 to the Nixon-Agnew campaign and was provided with the names of five different committees—two in California and three in the East—in order to circumvent the national \$5,000 limit on individual contributions. He alleged that, on occasion, large sums had been delivered in cash, notably a suitcase containing \$45,000 in fifty-dollar bills said to have been sent to Washington by an unidentified Newport Beach businessman two years ago.

A Lincoln Club member who has given large sums to promote Mr. Nixon's fortunes is C. Arnholt Smith, San Diego financier whose conglomerate holdings include banks (the United States National, with branches throughout Southern California) a baseball club (the San Diego Padres), hotels, a tunaboat fleet, ship-building has insurance companies, an airline (Air California), and a virtual monopoly of California taxicab franchises.

Mr. Smith is said to exert a strong influence in the councils of the club, with three officials of his bank on the board of directors and 13 officers of his various companies on the membership rolls.

The San Diego multimillionaire is reported to have raised more than a million dollars for the Nixon-Agnew ticket in 1968, including \$250,000 of his own money. On election night he sat with Mr. Nixon in the latter's New York hotel suite, watching the election returns on television.

One of the Smith lieutenants active in the club is Clement L. Hirsch, Newport Beach sportsman whose generosity and money-raising efforts in the President's behalf have been rewarded by several visits to the White House. He was one of a half-dozen wealthy supporters who were entertained at an unpublicized dinner aboard the Presidential yacht, Sequoia, in July of 1970.

Mr. Hirsch, whose wealth comes principally from food processing, is whole or part owner of four ranches totaling nearly 8,000 acres, has two yachts and some 40 thoroughbred race horses including one named June Darling, for which he reportedly paid \$175,000.

The leaders of the Lincoln Club may be publicity shy but, in the privacy of their Saturday breakfast meetings, they evidently have very little modesty about what they have done for Mr. Nixon or their importance to his political well-being.

The club's annual dinner on April 9, 1969, was a belated celebration of Mr. Nixon's election and the minutes of the meeting show Mr. Beckman to have been an expansive mood.

"We elected Richard Nixon President of the United States," he told the Lincoln Club members. "Without California, Dick Nixon could not have won the election. And it was Orange County, with some help from San Diego County, that provided the plurality for him to win California."

He went on to say that Lincoln Club members spearheaded the Nixon-Agnew campaign in Orange County, had raised more than \$400,000 to give Mr. Nixon his biggest victory anywhere in the nation—a county plurality of 166,000 votes that represented nearly one-third of the President's nationwide plurality.

In charge of raising the \$400,000 was Victor C. Andrews of Laguna Beach, a wealthy land developer, a director of the Lincoln Club and a long-time friend of Mr. Nixon. He formerly was regarded as the club's principal "pipeline" to the White House, but his influence in recent months appears to have been overshadowed by that of Mr. Kalmbach.

Mr. Kalmbach, a sandy-haired, conservatively dressed man of 50 who is known hereabouts as a judge of good horseflesh, was vice chairman of the Nixon-Agnew National Finance Committee under Mr. Stans in 1968 and is scheduled for the same role under Mr. Stans in this year's campaign. In fact, he already is traveling much of the time on White House missions.

A Newport Beach businessman, not a member of the Lincoln Club, described Mr. Kalmbach as "a highly respected lawyer and citizen" whose law practice has mushroomed in the last four years "because of his well known influence at the White House and his personal relationship with the President."

"If you have business with the Government and you want a lawyer you go to Herb, but you can't talk with him for less than \$10,000," the businessman added.

Since Mr. Nixon became President, the firm of Kalmbach, DeMarco, Knapp & Chillingworth has expanded steadily, with large suites of offices in the new Newport Center complex here and also in downtown Los Angeles. New clients attracted to the firm include Flying Tiger Airline, Dart Industries, United Air Lines, Travelers Insurance, the Marriott Corporation, the Music Corporation of America and the Nixon Foundation.

Mr. Kalmbach is secretary of the Nixon Foundation, which is headed by Leonard K. Firestone, the California Republican leader and the tire manufacturer. The foundation plans to build a Presidential library adjacent to the Nixon estate and Western White House at San Clemente.

The Nixon-Kalmbach friendship is attributed, in part, to Mr. Kalmbach's long and intimate association with Robert H. Finch, the Presidential advisor. The two were classmates at the University of California following World War II. Mr. Kalmbach was Orange County chairman for Mr. Finch's successful race for California Lieutenant Governor in 1966. Mr. Finch has been a guest at several Lincoln Club breakfasts to discuss California and national campaign strategy.

The Lincoln Club was born in 1963 at a time of Nixon adversity, when Republican fortunes in California had plunged to an all-time low and the party was split into quarreling factions. Mr. Nixon had just suffered a stunning defeat in his campaign to wrest the Governorship away from Edmund G. (Pat) Brown.

"After that devastating 1962 election, a group of us got together and agreed that, regardless of the particular shade of Republicanism each of us favored individually, we had to unite if we ever were to win elections," Mr. Beckman once told the club's members.

Unity—and secrecy—was the foundation stone of the new Lincoln Club, at the expense of the democratic process within the organization.

"We decided to put the policy-making powers in the hands of a small group of persons," Mr. Beckman added. "This has worked very well. There is always the potential danger, of course, of building up an entrenched establishment."

Senator HRUSKA. Does the Senator want them added to the witness list?

Senator KENNEDY. We might have to get to that.

Senator HRUSKA. I am sure we would.

Senator KENNEDY. As I understand, title 28 of the United States Code, in sections 511, 512 and 513, authorizes the Attorney General, and I suppose by implication the Justice Department, to render legal advice to the President, the heads of executive departments, and secretaries of the military departments. Every Justice Depart-

ment official that we have been able to be in touch with has taken the position that the Department does not give advice to private parties on legal questions.

I am very interested that Mr. Nixon's friends are able to use the Department to get their legal advice.

Senator COOK. I think it is President Nixon, Senator Kennedy.

Senator KENNEDY. President Nixon.

Senator SCOTT. May the record be corrected?

Senator KENNEDY. It will so stand.

Mr. Hume, we have been over this memorandum——

The CHAIRMAN. Did you say you have been over this memorandum?

Senator KENNEDY. No. I said we have been over the memorandum, the information earlier today.

The CHAIRMAN. Are you going over it again?

Senator KENNEDY. Can I ask a question?

The CHAIRMAN. We are going to recess until 10 o'clock in the morning.

Senator KENNEDY. Fine.

(Whereupon, at 5:30 p.m., the committee recessed, to reconvene at 10 a.m. on Friday, March 10, 1972.)

RICHARD G. KLEINDIENST

FRIDAY, MARCH 10, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 2228, New Senate Office Building. Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Tunney, Hruska, Scott, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to the Senators.

The CHAIRMAN. The Chair would like to announce this: Questions have been asked about doctors and a fairer way to get doctors to examine Mrs. Beard in Denver. We have an engagement to talk to the president of the medical society in Denver. It is planned—I do not know the gentleman's name—but we have an engagement to talk to him today to get him to appoint the two leading heart surgeons in Denver to examine Mrs. Beard and see whether, in their judgment, she will be able to testify.

Now, of course, these doctors will have to go through her physicians to get permission to examine their patient. But I thought that the fair way to do it would be to select, through an impartial source who is a physician, the two leading heart specialists in Denver for this examination.

TESTIMONY OF JACK ANDERSON, ACCOMPANIED BY BRIT HUME—Resumed

Mr. ANDERSON. Mr. Chairman, I wonder if I can make a clarifying statement? It will take 2 minutes.

The CHAIRMAN. Yes.

Mr. ANDERSON. Senator Cook had asked about corrections that we had made in the column. I had only 15 minutes in the office this morning and I picked up two of them that I recall. They are very short, and I would like to read them into the record.

On January 13 of last year, we wrote:

A few days ago, we quoted White House correspondence which indicated President Nixon had brushed off appeals from B'nai B'rith to take a strong stand against Soviet persecution of Jews. We have now learned that the White House letter did not represent the President's views, but was the result of poor staff judgment. After our story was sent out, the President spent 40 minutes discussing the plight of Soviet Jewry with Jewish American leader Dr. William Wechsler, President of B'nai B'rith, who has assured us that Nixon showed deep understanding about the underlying anti-Jewish policies in the Soviet Union.

We have also learned from high Israel officials that Israel has found Nixon to be a strong friend. Defense Minister Moshe Dayan, in particular, was impressed with Nixon as a man who always kept his word. We apologize to the President for this misunderstanding and, therefore, misinterpreting his attitude.

On April 3:

We reported last November that Jim Buckley after his election to the Senate, had asked to serve on the Senate Interior Committee. We noted that the Committee has authority over the Interior Department which, in turn, has jurisdiction over some of the Buckley family's limestone and oil holdings. The implication was that Buckley was seeking to protect the family currency greenery, not the public greenery. Buckley was travelling overseas at the time and, therefore, was unavailable for comment. We have now had an opportunity to visit with the Conservative Senator, who has completely convinced us that he sought the Interior Committee assignment because of his interest in ecology, not his interest in profit.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

Yesterday, at the request of the Senator from Nebraska, we placed in the record a letter from Mr. Keeney, Chief of the Fraud Section of the Justice Department, to Mr. DeMarco, outlining the legitimacy of campaign contributions by corporations to various groups.

The CHAIRMAN. Wait just a minute.

I would like to do something I should have done yesterday. I would like to place in the record a letter from Mr. William N. Letson, General Counsel of the Department of Commerce, and also a memorandum which he enclosed.

(The documents referred to follow:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., March 9, 1972.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Handed to you herewith is a copy of a statement by the Department of Commerce with respect to Richard Ramsden. This statement sets forth the information with respect to Mr. Ramsden's consultancy status with the Department and fees received from the Department.

The statement is being released to the press in response to requests made for this information.

Sincerely,

WILLIAM N. LETSON.

Enclosure.

STATEMENT BY THE DEPARTMENT OF COMMERCE WITH
RESPECT TO RICHARD RAMSDEN

On April 27, 1971, the Bureau of Domestic Commerce (BDC) appointed Mr. Richard Ramsden a consultant. This appointment resulted from the fact that BDC needed an expert to review its capacity for financial analysis and from the high regard in which Mr. Ramsden's abilities were held by the Director of BDC. In connection with this appointment, Mr. Ramsden completed the standard federal forms required for consultancy status. Mr. Ramsden has been paid a total of \$363.00 plus \$88.00 for expenses by the Department.

On April 27, 1971, Mr. Ramsden came to Washington to study BDC's financial analytic capabilities. He filed a report on May 13, 1971, and was paid \$121.00 plus \$88.00 for expenses for this service.

In late May 1971, Mr. Ramsden informed the Director of BDC that at the request of Peter Flanigan he had done some additional financial consulting work for the Federal Government. He asked to be paid through BDC in order to avoid refileing the rather lengthy forms already completed and filed with the Department of Commerce. He requested payment for the two working days he had been kept entirely away from his private employment. This request was authorized and Mr. Ramsden was paid \$242.00. The pay authorization reached the payroll office after the cutoff date for May 29 pay period, and was entered for the first two working

days thereafter, June 1 and June 2. This is the usual procedure when it is determined that pay is due after cutoff time required by the computerized payroll system.

The CHAIRMAN. Proceed.

Senator KENNEDY. We raised the issue, at least during the course of the hearing, about how Mr. DeMarco was able to get this kind of response or advisory opinion from the Justice Department, realizing that those who have been associated with Mr. DeMarco in the law firm were also key fund raisers for the Republican Party and, actually, the law firm, itself, handled Mr. Nixon's foundation. It was suggested at that time that this was not very extraordinary or unusual for the Justice Department. Well, I would like, at this time, to read into the record a letter that was sent by Mr. Kleindienst to Senator Cranston:

This is in reply to your letter of June 30, 1971.

The date on top of the letter is August 24, 1971, from Mr. Kleindienst.

This is in reply to your letter of June 30, 1971, requesting a formal opinion of the Attorney General as to whether Section 666 of Title 43 of the United States Code has application to private property rights of Indians held in trust by the United States and whether the *Eagle River* case or the *Water District No. 5* case may be extended in their application to adjudications in state courts of Indian water rights.

We regret to inform you that under existing law, Attorney General opinions are authorized to be given only in response to the request of the President of the United States or in response to request of heads of Executive Departments on questions of law arising in the administration of their departments.

The question on which you have requested an opinion is of such a nature as to require resolution by the courts. There is also the distinct possibility that the particular circumstances of different cases could have a bearing on the answer to your question. Under these circumstances, it would not be advisable for the Attorney General to express opinion on this question at this time.

There is also a letter from William Sessions, Chief of the Government Operations Section, Criminal Division, Department of Justice, to Mr. Rogovin—Mitchell Rogovin—of the firm of Arnold & Porter, 1229 19th Street NW., Washington, D.C.

Dear Mr. Rogovin:

This is in reference to your letter of December 22, 1970, requesting a ruling concerning the application of certain provisions of the Federal Regulation of Lobbying Act to your client, Common Cause.

As you know, the Department of Justice is authorized to render legal advice and opinions only to the President and the heads of the executive departments of the Government; and I regret, therefore, that we are unable to comply with your request.

Since the reporting provisions in question are administered by the Clerk of the House, you may wish to take up this matter with him.

(Signed) William S. Sessions, Chief, Government Operations Section, Criminal Division.

That letter is dated January 26, 1971. I would like to have both of those letters in the record.

The CHAIRMAN. That will be the order.

(The letters referred to follow:)

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 24, 1971.

HON. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in reply to your letter of June 30, 1971, requesting a formal opinion of the Attorney General as to whether Section 666 of Title 43 of the United States Code has application to private property rights of Indians held

in trust by the United States and whether the *Eagle River* case or the *Water District No. 5* case may be extended in their application to adjudications in state courts of Indian water rights.

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Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 26, 1971.

MITCHELL ROGOVIN, Esq.
Arnold & Porter,
1229 19th Street, NW., Washington, D.C.

DEAR MR. ROGOVIN: This is in reference to your letter of December 22, 1970, requesting a ruling concerning the application of certain provisions of the Federal Regulation of Lobbying Act to your client, Common Cause.

As you know, the Department of Justice is authorized to render legal advice and opinions only to the President and the heads of the executive departments of the Government; and I regret, therefore, that we are unable to comply with your request.

Since the reporting provisions in question are administered by the Clerk of the House, you may wish to take up this matter with him.

Sincerely,

WILLIAM S. SESSIONS,
Chief, Government Operations Section, Criminal Division.

Senator KENNEDY. It seems, Mr. Anderson, that on the one hand the firm that represents key Republican contributors was able to get a response from the Justice Department and those that were representing or interested in the problems of the Indians or Common Cause, were not. You have observed the political scene, are in touch with people as a columnist, are generally aware of their kinds of reactions to this kind of a situation. What does this sort of thing mean to you in terms of preferential treatment?

Mr. ANDERSON. Well, I think that the record that you have made speaks for itself. My only comment would be that the Justice Department's views on the legality of the Corrupt Practices Act as given to some law firm out in California is not very binding in any case. I think the courts ought to make that determination.

Senator KENNEDY. Of course, here we have sort of different people being treated different ways. On the one hand, currently, the law firm that has handled contributions for the Republican Party is getting this kind of an opinion, advisory opinion, from the Justice Department, and those that were interested in various decrees or decisions as applying, again, to Common Cause or the Indians—I am sure there are a lot more; these are the only two examples. I am sure there are a number of others. They are unable to get this kind of service.

This really, I suppose, to some extent, is the issue that we are considering in terms of these hearings, whether some people get a special kind of treatment or a special kind of a service as compared to others.

Mr. ANDERSON. Yes, I would agree with that. It also illustrates the danger of having a man in the Justice Department who wears both the hat of the Attorney General and the hat of the President's campaign manager. It illustrates also the great danger of our system of political contributions.

In that regard, Senator, I think the record perhaps ought to show that as early as April of 1971, we wrote that John Mitchell, then the Attorney General, would be—and we stated it flatly—we said:

Attorney General John Mitchell plans to step down from the Cabinet, probably in the fall, to take charge of President Nixon's 1972 Campaign.

Now, those on the inside know as a matter of positive fact that John Mitchell was serving as the President's campaign manager long before he stepped out as Attorney General; that he was making the decisions and performing the functions of the campaign manager, that he was calling the political shots from inside the Justice Department. Now, those on the inside know that. It is clear that the Republicans knew it. We have the Lieutenant Governor of California, Ed Reineke, calling upon John Mitchell, not as the Attorney General to discuss some legal matter, but as President Nixon's campaign manager, to discuss the convention. And for John Mitchell to come to this committee, as I presume he is going to do today, and try to, and say under oath—if he does that—the same thing that he said in his unsworn public statement, that he has no knowledge of the Republican Convention arrangements, that he had no knowledge of the ITT commitment, if he says that under oath, this is going to be one of the most arrogant examples of perjury this committee has ever had.

Senator COOK. Oh, Mr. Chairman, I really have to say that I think the Attorney General, the former Attorney General, can speak for himself when he goes under oath. I think this kind of conversation really is a height of irresponsibility on the part of Mr. Anderson.

Senator HRUSKA. Mr. Chairman, I would like to join in that. This committee should not put itself at the low level of listening here again and again to what amounts to political diatribe which has no bearing on the issues at hand. Give us the facts. The committee will determine conclusions and decisions that need to be made.

Mr. ANDERSON. I can only recommend that the committee question the former Attorney General very carefully on what he said in public about having no knowledge of the convention commitments and the convention arrangements when he was directing and handling them.

Senator COOK. Mr. Chairman, I doubt that is a recommendation he has to make to the committee.

Senator HRUSKA. The committee will speak for itself and act for itself. We have a long line of people seeking to give us advice and I don't think we should begin on it now.

Senator KENNEDY. Mr. Chairman—Mr. Anderson, could you outline—

Mr. ANDERSON. Whom should I listen to, Mr. Chairman?

The CHAIRMAN. Both of them.

Senator KENNEDY (continuing). Now, as I understand from the Justice Department release, Mr. Mitchell issued the following statement:

I was not involved in any way with Republican National Committee convention negotiations and had no knowledge of anyone from the Committee or elsewhere dealing with International Telephone and Telegraph. In fact, I do not know as of this date what arrangements, if any, exist between the RNC and ITT.

When the Department of Justice first brought action against ITT, I removed myself from all consideration of such matters. I have not discussed the subject with anyone from ITT or in the Department, with one exception, the exception being that at a reception held in the executive mansion of the State of Kentucky, a Mrs. Beard approached me on the subject. I advised her that I was not familiar with the matter and that the appropriate people representing ITT should take the matter up with the appropriate people in the Department of State. That was the only time I have ever seen Mrs. Beard and the above is the extent of our conversation on the subject.

With respect to allegations that the President discussed the matter with me, there would be no occasion for him to do so and he did not.

Now, that is his statement. What can you recommend—

The CHAIRMAN. Wait a minute. You said advised her to take it up with the Department of State.

Senator KENNEDY. The Justice Department, excuse me. I stand corrected.

What can you tell us—that was a statement issued on February 28, 1972—what can you tell us from your own knowledge that is at odds or at variance with that statement?

Mr. ANDERSON. Well, I know that we got to the office of the Lieutenant Governor of California—other reporters have done this, Senators have done it—and they got a completely opposite report. They got a report from Ed Reinecke, Lieutenant Governor of California, that he had, in fact, discussed these convention arrangements with John Mitchell; that he had discussed the hope, the possibility, the prospects for the convention going to San Diego, and that he had specifically mentioned the ITT commitment of up to \$400,000.

Senator KENNEDY. What is the basis of that information? This is from the other newspaper reports? Or what is the basis of it?

Mr. ANDERSON. We have been in touch with two newspaper reporters who talked to Ed Reinecke personally. My own associate, Brit Hume, was unable to reach Reinecke but spoke to his aide, Mr. Gillenwaters who happened to be in on the conversation and, therefore, could give a direct statement on it. He described in some detail what had been said at that conversation with John Mitchell.

Then Senator Tunney had a conversation, as I understand it, with Ed Reinecke, about it a half hour or so before he started changing his story. He changed only the time. It does not really change the fact that John Mitchell told a falsehood.

Senator KENNEDY. Mr. Hume, what can you tell us, if anything?

The CHAIRMAN. I think, now, that we ought to have questions not dealing with rank hearsay. It is inadmissible in a court.

Senator KENNEDY. Well, it is my understanding that Mr. Hume talked to Mr. Reinecke's assistant, who attended the meeting. He had talked to the man—

Mr. HUME. That is correct, Senator Kennedy. I spoke to Mr. Gillenwaters who told me he had attended the meeting in the Attorney General's office with Mr. Reinecke.

The CHAIRMAN. I don't think it is fair, now, to deal in rank hearsay. The witness himself is the best witness.

Now, of course, he can quote what Mr. Reinecke's assistant said. It would not be binding on Mr. Reinecke. Having his own testimony is the best testimony.

Senator KENNEDY. Well, if he can come back on that question afterward, if you think so, we can move on to something else.

The CHAIRMAN. Why, of course, he can come back.

Senator KENNEDY. Mr. Hume, can you tell us as an investigative reporter—how long have you been an investigative reporter or journalist or author? Can you give us a bit of your background?

Mr. HUME. I have been a newspaper man for 6 years, a little more than 6 years; I started in journalism at the Hartford Times in Connecticut. I worked there for a year and a half and left for a job in Hartford with the United Press, where I worked for just about an even year. Thereafter, I returned to live in Washington, which is my hometown, and I commuted for a time to Baltimore where I worked for the Evening Sun.

I think it was in February of 1969, I took a fellowship at the Washington Journalism Center which lasted until late May or early June. During that time, I began research on a book which has now been published, which I continued to work on through the end of 1969. When my advance ran out and my basic research had been completed, I began looking for a job.

It was early in the following year that I began working for Jack Anderson and I have been with him since.

Senator KENNEDY. So you've been involved in journalistic activities for some 6 years?

Mr. HUME. Yes, sir.

Senator KENNEDY. And based upon your experience, your conversations with Mrs. Beard, what can you tell us based upon this experience and your conversations, to give you the belief that this memorandum was an accurate memorandum, that it was not false?

Mr. HUME. Well, I assume you mean you want me to address myself to the question of whether I believe the memo is at least authentic, as we believed at the time?

Senator KENNEDY. Authentic, yes.

Mr. HUME. I believed from my conversation with Mrs. Beard that the memo was written at the time it was said, and was written by her. After all, when I first spoke to her, when she told me that she had indeed written it, this was quite a damaging acknowledgement. I think she was surprised that we had the memorandum, and was perhaps taken aback. It occurred to me that if she had had more time to think about it before responding to my questions about it, she might have thought better of acknowledgement that it was authentic. But I believe that her acknowledgement that it was authentic was true, and nothing that she said to me thereafter led me to believe otherwise.

The conversation that I had with her the next night was really an attempt to explain the memorandum.

Senator KENNEDY. Did she have it before her while she was talking about it?

Mr. HUME. That's right. The first time that I spoke with her at a long conference table, she sat right next to me, or a seat once removed, and I produced the memorandum, the original, which we have now turned over to the committee, and put it in front of her, and I invited her comments on it. She was quite flustered, as I have testified, but she did say that it was her memorandum, that it was her own initial on it, and then she went into some detail about it the following night.

So I'm persuaded that the memorandum was real and that it was written at the time that the date on it indicates. We have been able to corroborate, at least to some extent, some of the circumstances that surrounded it.

Senator KENNEDY. What most particularly corroborated it? What were the most particular matters that impressed you about the corroborating details?

Mr. HUME. Well, clearly, the convention commitment that she mentioned in here, had developed at the time of the memorandum. She speaks in here, for example, of the \$400,000 commitment. Congressman Wilson has confirmed to me on the 9th of May—excuse me, on the 12th of May—at the ITT annual meeting in San Diego, during dinner, such a commitment was made. So that fact is in order.

What is more, from independent work that we have done, talking to Mr. Gleason—

Senator KENNEDY. Has that been public, Mr. Hume, before? As I remember, the fact is that the commitment had been made, but the amount had not been.

Mr. HUME. My understanding is that neither the commitment nor the amount was a matter of public record at this time, the date of the memo. I believe that the existence of such a commitment may have become known at this time, but if it did, I'm not aware of it. My understanding is that at the time of the bidding process, at the time the bidding process was going on in Denver, the fact that there was a commitment from the business community to support this convention was made known. But not until later did it emerge, as I understand it, that ITT-Sheraton was the principal source here of the funds. So this appears to fit in time properly, and the people identified here are people who would have known about this.

Mr. Haldeman and President Nixon are mentioned in here. At the time that we obtained the memo and began working on it, Mr. Haldeman was still out of the country, I believe, with the President and there was, therefore, not anyone that we could get in touch with. We tried our best to get in touch with everybody else. Mr. Wilson, as I mentioned, has confirmed some of the sources surrounding the document, and Mr. Gleason has confirmed others.

As a matter of fact, when I spoke to Mr. Gleason he seemed to feel it was understood that some of the—he seemed to feel that the call to the White House was something he was responsible for, that he had made a call or the call had been returned, and that he had had a conversation with the White House and that this was what she was referring to.

He indicated no doubt that this memorandum was written at the time he said, and he said Mrs. Beard had gotten very angry about—

Senator KENNEDY. Do you remember what he said to you when you confirmed your conversations with Mr. Gleason?

Mr. HUME. The essence of the first conversation I had with Mr. Gleason was, he said, "Well, now, here is what happened here." Mr. Gleason had developed about the nature of the commitment, and I had talked to Bill Timmons about it.

At first, he was a little reluctant. He said, "I talked to someone at the White House about this."

He said, "I would rather not say who, but I assume you know who is the liaison for the convention arrangements over there."

I urged him to say, and he said, "Well, it's Bill Timmons." He said, "You know, after I talked to him about it I reported back on it to Bill Merriam. Dita got furious and called up Mr. Timmons and gave him a lecture about it."

So this certainly would seem to indicate that about this time, there was some contact with the White House. It did deal with confusion over the convention committee. It did involve a contact at a lower level than Mrs. Beard speaks of in her memorandum, and it did, according to Mr. Gleason, make Mrs. Beard angry and concerned that somebody else had been let it on it.

So here we have a situation where the basic facts seem to be corroborated. So that would add some additional authentication, it seems to me, to the document as far as its authenticity is concerned.

Senator KENNEDY. Mr. Chairman, if we are still under the 10-minute rule, we have gone 20 minutes, so I would be glad to yield.

The CHAIRMAN. Go ahead.

Senator KENNEDY. All right. You had the contacts with Gleason and Merriam. Could you tell us what you remember of the discussion about Merriam and his role, if any?

Mr. HUME. Well, Mr. Gleason indicated that in representing ITT as a public relations consultant, most of his dealings were with Mr. Merriam, but there were things and that they worked together and that he really didn't have much to do with Mrs. Beard. And he did say that some confusion had developed in that Merriam asked him to straighten it out, to try to find out through his contacts in Republican circles just exactly what was expected here.

I talked to Congressman Wilson about this and he said, "Yes, there was confusion about whether it was services." He said Bill Merriam had told him that it was going to be services, and Congressman Wilson said, I told him, "No, it's not going to be services, it was cash." And he put the finger right on Mr. Merriam as the guy with whom he had the conversation concerning confusion about this matter.

Senator KENNEDY. Well, did you have the conversation with Mr. Merriam—did you ask him whether he was working on the antitrust case or whether he was working on the San Diego case?

Mr. HUME. Mr. Merriam? I'm sorry. I'm sorry, I never was able to reach Mr. Merriam, although I did try.

Senator KENNEDY. Now, then, tell me—the next morning after your initial conversation, Mrs. Beard described going back to her office and the shredding of certain materials?

Mr. HUME. Yes, that's correct.

Senator KENNEDY. Were you there at that time?

Mr. HUME. At the time the documents were shredded?

Senator KENNEDY. Yes.

Mr. HUME. Well, I only heard about it from her.

Senator KENNEDY. Can you tell us, did she say who else was there at the time?

Mr. HUME. No, she just indicated that the ITT officials were doing it.

I said, who ordered them into the case?

And she said, well, I assume Bill Merriam but she didn't seem to be absolutely certain. She was quite upset about the shredding of the documents, because she felt they had gone beyond the office files and had done it to some things that dealt with her personal life.

So that was really our only source of information about that, that she said there had been shredding of papers and she was really overwrought about that and she was quite upset about it when she described it to me.

I have one thing. We did our best to get the other side of the story on that by calling the ITT people here and asking them if they would tell us something about that allegation that Mrs. Beard had made. Their answer was, "No comment." I said: Can you give us a denial of it? Again, they said, "No comment."

As Jack pointed out in his testimony, when ITT issued a statement on this subject, although our column had appeared or was at least in the process of being published at that time, and they had known about it, known what was in it, they said nothing of the document-shredding allegation. I don't know if you can conclude anything from that one way or another, but it would seem to me that if that were not so and they knew it was not so—because it seemed a kind of suspicious activity for a company to be engaged in—they might have indicated that it was not so.

Senator KENNEDY. Mr. Hume, finally, from your direct conversation with Mrs. Beard, did you understand, or did she tell you, that she was working on both the antitrust case and the San Diego Convention?

Mr. HUME. She kept stressing that really she was not deeply involved in the antitrust matter; indeed, that she was not really an expert on this, but that everybody in the whole company was acutely aware of what was going on in the antitrust case, because the company considered it so vital. She was aware as a matter of general knowledge about it.

When she saw, was aware of this possible opening to see the Attorney General, and discuss it with him, she did, as I pointed out earlier, so that she had written a memo to Mr. Gerrity in New York—who is, I guess, kind of her overall boss in New York, at least for the Washington office—to say that this opportunity was coming up and that he responded in a phone call and they talked it over, and he told her what to seek if the subject should come up.

Senator KENNEDY. Did she mention who was working on the antitrust matter to you at all?

Mr. HUME. Well, she mentioned that, you know, the lawyers were chiefly responsible for it.

Senator KENNEDY. Could you tell me just finally, and I think my time is up, you mentioned one conversation with Congressman Wilson. Did you have any other conversations with him?

Mr. HUME. I think I only had one conversation with Congressman Wilson. That was after we had gotten the memo, and I believe I had talked with Mrs. Beard, because he confirmed—that is how I found out first about her account of the dinner, at which the commitment was first made.

Senator KENNEDY. That is the May 12 meeting?

Mr. HUME. That's right, and he really confirmed the circumstances of that meeting. He said, this is where it came up, the confusion had developed later on.

Senator KENNEDY. And that Mr. Geneen and Mrs. Beard were at that meeting?

Mr. HUME. That's right; yes.

Senator KENNEDY. That is all, Mr. Chairman.

The CHAIRMAN. Senator Cook?

Senator COOK. Mr. Hume, just before these hearings started this morning—I presume you know what I'm going to ask you—a young man came into the room and was directed by one of the staff men from Senator Kennedy's office to deliver some papers to you, which you put in your briefcase. Is your organization supplying information to some members of this committee for the purpose of this hearing, and not supplying them to all the members of this committee for the purpose of this hearing?

Mr. HUME. Well, Senator Cook, I want to explain that.

Before the hearings began and before I ever had any idea that I would be a witness, I was contacted by Senator Kennedy's staff and asked if I could assist them. It is our policy to assist congressional committees and, therefore, I agreed, and I sat down and spoke with some members of Senator Kennedy's staff and furnished them with full copies of the full column which had appeared, but had not appeared in full in the Washington Post.

Although I didn't recall it until this morning when I was casting about rather desperately for a copy of my typed notes, I volunteered to them, as I have now volunteered to this committee, my typed notes on that matter. I couldn't remember until this morning for sure whether they had a copy or not. I hoped they had; I'll tell you why. I left the house this morning and left them behind.

Senator COOK. Therefore, the notes which you did not want to give to the committee yesterday you had already given out anyway.

Mr. HUME. Senator Cook, I thought we had resolved that yesterday. As I tried to explain, my objections to giving the notes out was really more of a procedural thing and not a matter of substance. As I said, I had no objection to any member of this committee or its staff or any member of the public seeing these typed notes. It was just a question of the way it came about. Now, as I say, I have volunteered them to the committee; they'll be available to the committee and anyone on it; and I think that is as it should be.

Senator COOK. Mr. Hume, I might remind you that the first objection to those being put into the record did not come from you but came from Mr. Anderson, who said, they are part of our reporters' notes and we refuse to turn them over to the committee, that they constituted as such the reporters notes, and that was it.

Mr. ANDERSON. Because of the nature of the inquiry, Senator.

Senator COOK. Yet those notes had already been made available to other members of this committee. Therefore, it was of knowledge to somebody else on this committee but it was sought to be withheld from other members and for the purpose of—

Mr. HUME. Senator Cook, had a member of your staff consulted with me at the time that Senator Kennedy's staff consulted with me, I'm positive I would have volunteered the same information.

Senator COOK. But at the time you refused yesterday, you knew that you had already given a copy of that memorandum to his staff—

Mr. HUME. Senator Cook, I'm sorry that's not so.

Senator COOK. You had forgotten?

Mr. HUME. Yes, I had forgotten, and when I called Senator Kennedy's office this morning, I asked whether indeed they had made a copy and they had. But I now have the original of the notes, which

my wife brought down to me, but it was a little late and I thought we might get into testimony about them, and I wanted to have them handy so if I testified I could testify accurately about them.

Senator Cook. You might remember that, because we've had some very severe criticism about what people had forgotten. When this hearing started, and when that column came out, it was of such short duration, the time between then and the end of February, if you had forgotten about those notes, I doubt that some people should be too severely criticized who had forgotten about some conversations they had had in the Justice Department over a year ago.

Mr. HUME. I understand, Senator Cook, but the criticism about forgetfulness was not made by me, and I was not asked questions on whether I had given these to anybody else, and there was no reason for me to have my memory jogged on whether that had occurred.

Senator Cook. Are you now volunteering to submit those notes?

Mr. HUME. Yes, as I did yesterday, and I do volunteer them and I will leave them with the committee today.

Senator Cook. Fine.

Would someone from the staff—

Mr. HUME. I hope I can hold on to my originals so that if I may need to testify about them—

Senator Cook. Well, you have a photostated copy in your case?

Mr. HUME. That's right; I do, don't I?

Senator Cook. Mr. Hume, did Mrs. Beard tell you how she wrote the memorandum in question?

The CHAIRMAN. Let him see if he has the photostats.

Senator Cook. He has them.

Mr. HUME. I have them.

No, she did not tell me how she wrote it.

Senator Cook. You didn't ask her?

Mr. HUME. I don't recall that I did.

The CHAIRMAN. Do you wish those to be made a part of the record?

Senator Cook. Yes; the originals.

The CHAIRMAN. They will be made a part of the record.

(The document referred to follows:)

FEBRUARY 24, 1972.

Memo for record:

I reached Dita Beard at her home tonight after failing to get in touch with her today. She returned my call and left the home phone. She wanted to talk with me in person. I took her address and drove immediately to her home in South Arlington. The address is 2313 South June. I arrived sometime shortly after 10 p.m. She was with her son, Bull, a friend, Walter someone, and her secretary, Beverly someone. We talked in her kitchen. She sipped a drink and chain-smoked Chesterfields at the counter where we sat on wooden slat stools. At first, we just talked generally about how unfortunate it was that she had been with the two ITT press men during our meeting the day before. She went into a long discussion about her life and the difficult time she had which ended with her telling me how she landed a job with ITT in Washington in the early 1960's. She said she has five children, has been married twice, the second time to a Randy Beard, a man she described as alcoholic. She had been drinking and was very emotional. She wore the same clothes as when I had seen her at the ITT offices the day before, a char- treuse sweatshirt and cotton slacks (yellow). She looked weary and as if she had been crying, which she did several times during our conversation. Because she was so upset, I felt it would be unwise to produce a notebook for the discussion.

When we eventually got onto the subject at hand, the memo, she repeatedly promised to tell me the whole truth, but also kept asking me if I wanted to "destroy" her. She told me one of her assignments was to drum up business for

the Sheraton Hotel division of ITT. She said the first thought of having the GOP convention in San Diego came during a conversation she had with Ed Reinecke in about January of last year. She said he considered it a possibility and mentioned it to her. She said he later reported on a meeting with John Mitchell on the subject in which Mitchell, told there was a \$400,000 commitment to back the convention in S.D., asked, "From Whom." "From Dita Beard," she said Reinecke answered. "Humph," she quoted him as quoting the A.G. as replying.

She explained her memo as an effort to "put some sense into the head of the stupid shit Merriam," or words to that general effect. Her conversation was laced with four-letter words, including "fuck." She said Merriam had brought about much of the unfavorable publicity on the ITT convention arrangements by letting slip a comment at the Metropolitan club to the effect that Geneen had had a conversation with Bob Wilson and the outcome of the anti-trust cases then pending had been assured to go ITT's way. She said the remark had been overheard by Richard Dudman of the St. Louis Post-Dispatch.

She said the first real step toward getting the convention into San Diego came at a Luau dinner at the Half-Moon in San Diego following the ITT annual meeting in the Spring. She said it was May. She said she brought up the subject at dinner in the presence of Geneen, Bill James, head of the Sheraton division, Bob Wilson, the Congressman. She said it was the first any of them beside herself and Reinecke really knew of the idea, except that it had long been known that President Nixon had wanted the convention there. She said that after her conversation with Reinecke earlier she had flown to S.D. and searched the city high and low for hotel space to get an idea if it might be possible to have the convention there. She said Bob Wilson acted in astonishment at the idea because it was news to him. Indeed, she said, he was annoyed by the whole thing a little because he had not been told about it. She said Geneen reacted by saying, get Bill James over and then said something to the effect that ITT would certainly support the convention, underwrite. She repeatedly referred to the cash the company is putting up as "seed money." She also said that when Reinecke had first discussed the matter with her, he had said something to the effect that he felt S.D. could accommodate "this kind of a convention," not something like Miami.

She said the Half-Moon session was the place Geneen made his original offer, but she did say that he later had a phone conversation with Wilson. She said this was what the memo meant when it mentioned "his meeting with Hal."

She explained that the memo was also an effort to straighten Merriam out on the actual terms of the convention offer which he had got confused and mentioned to a guy named Gleason at the White House. She said when she talked to Merriam, he mentioned this to her after my appearance at her office. She said both on the phone and at her home that she believed this guy Gleason was the source of the leak. She said Merriam had told her he didn't remember what he had done with the memo.

Finally, we began to get into the subject of Mitchell. She said the PR man wanted her to tell me that she made the whole thing up. But she said that would be a lie and she wouldn't lie like that. She said when I kept pressing her about it, that she had called Louie Nunn and he couldn't remember any conversation that might have had to do with Mitchell, I kept pressing her. She said things like, "If I tell you the truth, will you use it to destroy me." She was becoming increasingly emotional. I tried, gently, to continue to press. I asked her if there was a way she could tell me the facts and we could keep her name out of it. She shook her head. She was really upset at this point. I recited my surmise about what had occurred. Namely, that the fix, if there was one, took place before the settlement proposal was drafted and before the negotiations began. I said I thought the influence must have come while the matter was still in danger of going to trial.

I finally began to press her to tell me if there had been an agreement of this kind. She was weeping now. She nodded yes. I asked her if it was negotiated by her. Again, a yes nod. With Mitchell? Again, yes, nodding. She was broken down now, her head in her hands and she darted into the bathroom just behind the stool where I sat. I paced the kitchen while she was in there. It was just about 11 o'clock.

When she came out, she again asked if we were going to ruin her. I said I didn't know, that I wouldn't know what we would do until we had the facts. She then told me this story. She was invited, as she had been in the past every year, to go to the Kentucky Derby. This year, her friend Gov. Nunn mentioned that John Mitchell would also be one of his guests at the governor's mansion after the race. She said she mentioned this to E. J. Gerrity the New York Public Relations chief of ITT in a memo. She said before she left, they talked by telephone and Gerrity told her what the company wanted most if she and Mitchell should get onto the subject of the merger cases then in court.

She said that after the derby, she went to the Mansion for a buffet dinner and mentioned that Martha Mitchell was putting it on and she said some unkind things about Mrs. Mitchell. She said this was her first meeting with John Mitchell. She said that as they were going in to get in the buffet line, Mitchell took her arm and took her aside. It was just the three of them then, she said, Mitchell, herself and Gov. Nunn. She said that Mitchell proceeded to give her a scathing, hour-long scolding in the bluntest language for putting the pressure on the Justice Department on the mergers via Capitol Hill and other means instead of coming to see him. She said Mitchell said he had been told she was the "politician" in the company and he had heard much about her long before coming to Washington. She said he knew about all the speeches she had written and gotten delivered by friendly members of Congress. She said Mitchell knew all about her, even asked about son Bull's grades. She said she had gotten speeches delivered in both houses of Congress. She estimated about a dozen. She said Mitchell told her he had gotten a call from Nixon saying "lay-off ITT." Later, she changed this to something, like Nixon saying "make a reasonable settlement." She said Mitchell told her he was sympathetic but that his great problem was McLaren, whom she described as a "shit. She said she did what she could to fight back, but she was overwhelmed by Mitchell's diatribe. She blessed Louis Nunn for staying at her side during the whole thing. Finally, she said she asked him, "Well, do you want to work something out," or words to that effect. She said he replied in the affirmative. She said he said, "What do you want," meaning what companies did ITT wish to retain in the merger case settlement. She said she told him they had to have the Hartford Insurance Company "because of the economy." And she added that they also wanted "part of Grinnell." She said she couldn't remember what else she asked for, but it was exactly what the company got in the settlement.

She said the agreement was reached, actually, as they went through the buffet line and then sat down to eat. She said that Harold Geneen knew nothing of the fix with Mitchell and that he still does not. I pressed her repeatedly on this, saying I found it hard to believe but she stuck to it all the way. She said this was the only meeting or conversation she has ever had with J.M. She said that their discussion had nothing whatever to do with the convention negotiations and later said that her conversation with Reineke about Mitchell's reaction to the proposed San Diego location came after the Kentucky session. She insisted this was correct, although I pressed her and said it would have seemed more likely Reineke would have gotten the reaction he got from Mitchell before their meeting.

She said the only other person inside ITT who knew of this at the time was Gerrity. She said she had reached him on vacation prior to her meeting with me at home and that he urged to pull the big sob story about the kids and everything in an effort to talk me out of doing a story. She spoke with great admiration and gratitude of Geneen repeatedly.

She said that after the meeting in her office, she came in the following morning to find that the ITT security men from New York had gotten there first and were destroying all her files. She said they said they feared they might be subpoenaed after our story came out. She said they were destroying them by putting them through a document shredder. She said they even destroyed some of her personal files.

She said the PR types I had seen the day before had told her to get out of town and stop talking to me.

She insisted throughout that the merger fix was entirely a separate matter from the convention deal.

Senator Cook. She did not tell you how she wrote it?

Mr. HUME. No.

Senator Cook. You didn't ask her whether she had typed it or handwritten it, or how it had been accomplished to begin with?

Mr. HUME. No, I don't think I did ask her; no, Senator, I don't believe I did.

Senator Cook. She didn't volunteer any of that information?

Mr. HUME. No.

Senator Cook. Did you ask her whether she typed it?

Mr. HUME. No.

Senator Cook. You didn't ask her who typed it for her?

Mr. HUME. No.

Senator Cook. Did she say that she delivered it to the addressee or had it delivered to the addressee?

Mr. HUME. She didn't say.

Senator Cook. Did she say that she had gotten any response by reason of the memo directly or in writing from whomever she had—

Mr. HUME. She did not say that. However, she did say, Senator Cook, that there—this was the conversation I had with her in the evening as opposed to the one the day before—she did say that she had spoken to Mr. Merriam about the memo and he had said he didn't know what he did with it. She gave me a rather exasperated look at the time she said that, as if to say, "Gee whiz, could it have slipped away from him, and now it's in your hands?"

Senator Cook. Well, did you ask her if she wrote it?

Mr. HUME. I asked her if she wrote it; that's right. I asked her if she was the author of the memo and she said she wrote it. I didn't ask her the specific mechanical way she set it down on paper.

Senator Cook. Does she have a secretary?

Mr. HUME. Yes, she does.

Senator Cook. Would the assumption be that the secretary had typed it?

Mr. HUME. I made no assumption in that regard.

Senator Cook. But she didn't tell you that she had typed it?

Mr. HUME. She did not.

Senator Cook. Now, Mr. Hume, and Mr. Anderson, I guess, I think we have finally come down to, kind of, the prospect that this is a fight between the good guys and the Republican big business bad guys; is that it, in your attitude, Mr. Anderson?

Mr. ANDERSON. No; I don't think that it's fair to oversimplify it in those stock terms.

Senator Cook. The reason I ask you and particularly ask both of you, is because Mr. Hume said he worked for the Hartford Times for awhile and was also working for United Press in Hartford. As long as we're trying to figure out who the bad guys are, and if the bad guys did something that was mean and nasty for the country, I wonder, Mr. Hume, if, while you were in Hartford you were familiar with one Mr. William A. Cotter?

Mr. HUME. No.

Senator Cook. Mr. Cotter used to be the insurance commissioner for the State of Connecticut.

Mr. HUME. Let me add, Senator, that since he has come to Washington, I have talked to him on the telephone but I did not know him while I was there.

Senator Cook. Are you familiar with the circumstances surrounding the approval by the Democratic insurance commissioner of the State of Connecticut to authorize ITT to acquire Hartford Fire?

Mr. HUME. Only in the most general way, Senator. I read a number of stories that were written about it at the time. I know there was some controversy about it, and I had sought to pursue some of the angles of that story myself.

Senator Cook. How far have you pursued them?

Mr. HUME. Not very far, and I haven't—it's not a story that we have gone into in any major way or that I have had any success with.

Senator Cook. Are you familiar with the fact that approximately 2 weeks after the Democratic insurance commissioner of the State of Connecticut announced that Hartford Fire could be acquired by ITT, Mr. Geneen went to Hartford and held a press conference and an-

nounced that they would bring a corporation office to the Hartford complex, and also that a Sheraton Hotel would be built in the Hartford complex?

Mr. HUME. I wasn't aware of that, Senator Cook, but I was aware that during the course of the efforts by ITT to acquire Hartford, there was some considerable concern among the city fathers there, that this was an attempt to get hold of this company because of its huge cash resources, and to kind of raid it and use it for cash-flow purposes. My understanding is that the company, ITT, said, no, that's not our intention at all; we plan to put more into Hartford than we're going to take out of it.

That seems to set up a contrast between the financial argument that Mr. Rohatyn had made to Mr. Kleindienst and to Judge McLaren, in view of the fact that they're now saying that the cash, that in order to win the settlement, they indicated that the cash resources of Hartford were essential to their continued help.

Senator COOK. Well, in asking the next question, I want you first of all to know that I have no brief for the Republican National Committee taking \$400,000 from any corporation for the convention now or at any time in the future. I'm not trying to figure out who is more guilty than anybody else. But if it is the good guys against the Republicans, if, in fact, the Democratic insurance commissioner said on occasion, and I quote from an article in last night's Star: "As long as I'm going to approve the merger, we might as well do something for the city of Hartford, and ITT has expressed a willingness to make a charitable civic contribution," would you say that if ITT came to Hartford 2 weeks later and decided to build a Sheraton Motor Inn in the downtown complex and to have their corporation office in Hartford, that amount of contribution to the Insurance Commissioner of Connecticut would be worth a whale of a lot more than \$400,000?

Mr. HUME. It's hard to say exactly. I must say that I was, from what I read about that case, was——

Senator COOK. Mr. Hume, you have no qualms about the \$400,000 and how you felt about it?

Mr. HUME. I'm sorry, Senator. I don't believe I have expressed any personal views about that.

Mr. ANDERSON. May I act as——

Senator COOK. Let him finish.

Mr. ANDERSON. As soon as he finishes, I can shed some light on your question.

Mr. HUME. I want to point out I have been interested in the Hartford story which was a little awkward for me to cover from the perspective of Washington, which is not where it happened. I have been interested in it and have been in touch with Mr. Cotter about it, and I believe, if I have a moment to go and get on the phone to our office, I can produce a column which we did which was extremely critical in its implications of Mr. Cotter involving this, at least involving his handling of some campaign contributions and how he reported them. And I think we'll also find that we have stories on the Hartford merger involving the Cotter end of it and that this is something that we have been interested in, really, as we have been in this story. It is simply a case of which story you could get and which story you could not.

Senator COOK. Mr. Hume, I would only remind you that when you said it is difficult to cover a story in Hartford from Washington,

you've had no trouble testifying at length about conversations with Mr. Gillenwaters, with other representatives in California, in San Diego. I just might say to you that it might be just as easy to accomplish and go into it in depth by reason of telephone conversations that you may have had with people in Hartford.

Mr. HUME. That's a good point, Senator. However, the basic situation we're dealing with is a memo that was written in Washington about Justice Department actions which occurred in Washington.

Senator COOK. Well, there is some——

The CHAIRMAN. Senator Cook, your time is up.

Mr. ANDERSON. May I respond briefly, Mr. Chairman, because I have some more information on that?

The CHAIRMAN. Yes.

Mr. ANDERSON. Possibly unknown to Mr. Hume, we have been working on the Cotter angle. I have obtained a copy of the secret transcript of Mr. Cotter's testimony before the SEC. We are investigating it very thoroughly and once we have gotten it all nailed down, we'll print it in great detail.

As far as the good guys and the bad guys are concerned, I certainly do hope that this committee and the Senate will be able to see the wrong in a great corporation negotiating an antitrust settlement at the same time that it is offering a \$400,000 commitment to the Republican Convention. I do hope that there are not too many caluses on the consciences of the Senators to see that that is wrong.

Senator COOK. Mr. Anderson, as long as ITT appears to be on trial here, which I think they are, don't you think it is incumbent upon you as a witness if you have information about other ITT dealings that involve this same type of situation, that they ought to be brought up before this committee now and not held for the purpose of an article that you might wish to print at a later date that might cause this committee to come back again and then go through this same thing again? Or do you believe it might be incumbent upon you, as you said it was incumbent upon Dr. Liszka—I might say, that he should have told someone that he gave physicals for Hamilton, he should have told us that he had been under investigation by the Social Security Division of the U.S. Government—if you have other information as to the impropriety of ITT, don't you think if you publish an article at a later date and disclose it, you also are withholding information from this committee at this time relative to this subject?

Mr. ANDERSON. I did not recognize that this was an investigation entirely of ITT. But we do have, as I have said earlier, a number of memos from the files of ITT. I do also have this transcript. If the committee is interested in going into these things, we'll cooperate with the committee.

Senator COOK. I would like to very much, but if you, for the purposes of maintaining your sources, or for the purpose of maintaining the right that you absolutely have to publish them, it would certainly be the desire of this Senator that we go into closed hearings for those purposes, so that we might secure that information and that they need not be made public until you so wish.

Mr. ANDERSON. You'll have our entire cooperation.

Senator COOK. Thank you, Mr. Anderson.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Mr. Chairman, there is just one question I would like to raise here on the good guys versus bad guys. I fail to see the

relevancy. Do you happen to know, Mr. Anderson, the point of the emphasis on the Democratic insurance commissioner of Massachusetts?

Senator COOK. It was Connecticut, Senator.

Senator BAYH. Connecticut, excuse me.

Mr. ANDERSON. The name that has been mentioned, Senator, was the former insurance commissioner, Mr. Cotter, who is now a Congressman from Connecticut.

Senator BAYH. Well, at least, the name Cotter has not been sent to the Senate of the United States for confirmation to serve as Attorney General of the United States; is that accurate?

Mr. ANDERSON. That is right.

Senator BAYH. I thought that perhaps the reason we are here is to try to determine the eligibility of a man to be Attorney General of the United States, and that ITT comes up only peripherally in an effort to answer that question.

Mr. ANDERSON. That was my impression, and that's why I did not volunteer this as material. But it has now been volunteered and I'll cooperate with the committee fully in a full-fledged investigation of ITT.

The CHAIRMAN. Now we have something for the future.

Senator BAYH. You mean plans are underway, Mr. Chairman?

Senator COOK. We may solve a problem for the distinguished Senator from Michigan before we're through with these hearings.

Senator HART. Those will be long hearings.

Senator BAYH. I asked this originally in all seriousness, because I do not think we are trying to do anything—at least as far as the Senator from Indiana is concerned—but to answer one question and that is: "Is Richard Kleindienst qualified to be Attorney General of the United States?"

I also would like to find out if there is hanky-panky going on in either of our parties with the corporations involved in some of these actions being thrown around. But I think the chairman is right—we do not want to get too far afield. So far, I do not think we have.

I think, Mr. Hume, I should direct these questions to you. Yesterday we participated in a rather lengthy dialog dealing with the credibility of Mrs. Beard. You are one of the few people we have had a chance to talk with who has visited with Mrs. Beard and who has been able to give us your opinion on her credibility. I ask you the same question relative to your discussion with Mr. Reinecke's aide, Mr. Gillenwaters. I would like you to fill in on your conversation in a bit more detail, as far as the conversation you had with Mrs. Beard, if you wish, please. You mentioned yesterday that she told about her meeting with Attorney General Mitchell in Louisville. Is that accurate?

Mr. HUME. That's right; yes.

Senator BAYH. As I recall, and I don't want to put words in your mouth, so perhaps you should review it, as I recall, you said that in her opinion the Attorney General had given her quite a tongue lashing. Then, later on, they got to talking in specifics, so far as what she wanted. Is that an accurate statement?

Mr. HUME. That is right; yes. After the scolding was over, she said, the animosity passed and they just had a brief discussion about the case—cases, I guess I should say.

Senator BAYH. What was the total length of the conversation? We've been told by some that it was——

Mr. HUME. She indicated it was about an hour, around the dinner period, and at the reception.

Senator BAYH. About an hour around the dinner period?

Mr. HUME. That's right, and she did say that part of it transpired after she had gotten this lecture and they were getting their food, going through the buffet line. She said they were talking as they were getting their food. As I recall it, she said, in fact, the actual conversation about it, when he said, "What do you want?"—meaning what companies they most wanted to retain—and she was answering as they were going through the buffet line. She said they then sat down and they sat at the same table to eat.

Senator BAYH. Oh, they sat at the same table to eat?

Mr. HUME. That's what she said; yes.

It occurred to me last night as I was reviewing the day, that there was one aspect I might not have gotten into that may help the committee formulate some idea of the validity of what she was telling me.

When we got down to the question about just exactly what she was referring to in this memo, and she made these bald statements that the Attorney General was definitely helping, I think I explained yesterday that I recited what was really a guesswork theory of mine, that if there was some kind of a fix in this case, it must have been before the settlement proposal had been drafted by the Justice Department and before the talks that followed that began. I wanted to go into this to explain just exactly how this acknowledgment of hers that there was some kind of deal between her and the Attorney General came about. Using these notes here—I'll read them.

Finally, we began to get into the subject of Mitchell. She said the PR men meaning her office PR men—wanted her to tell me that she made the whole thing up. But she said that would be a lie and she wouldn't lie like that. She said when I kept pressing her about it, that she had called Louie Nunn—meaning after I had showed her the memo—and he couldn't remember any conversation that might have had to do with Mitchell. I kept pressing her.

Senator BAYH. She actually called the Governor?

Mr. HUME. She actually called Louie Nunn to check back to see what conversation she could have been referring to. He indicated he didn't recall.

I kept pressing her. She said things like, "if I tell you the truth, will you use it to destroy me." She was becoming increasingly emotional. I tried, gently, to continue to press. I asked her if there was a way she could tell me the facts and we could keep her name out of it. She shook her head. She was really upset at this point. I recited my surmise about what had occurred. Namely, that the fix, if there was one, took place before the settlement proposal was drafted, and before the negotiations began. I said I thought the influence must have come while the matter was still in danger of going to trial.

What I meant by that was going all the way through the courts to the Supreme Court tests of which Judge McLaren had spoken.

I finally began to press her to tell me if there had been an agreement of this kind.

At this point, when I recited my guesswork theory about it, she did give me a kind of startled glance, which gave me the sensation that perhaps I had hit upon something here, and this was the time to press.

I finally began to press her to tell me if there had been an agreement of this kind. She was weeping now. She nodded yes. I asked her if it was negotiated by her. Again, a yes nod. With Mitchell? Again, yes, nodding.

Senator BAYH. The memo leads us to believe that your recapitulation of the conversation is that Mrs. Beard said she was a part of the agreement—as you describe it, the fix—and that this was directly with the Attorney General Mitchell?

Mr. HUME. Yes, that is how she painted it to me.

She was broken down now, her head in her hands, and she darted into the bathroom just behind where I sat. I paced the kitchen while she was in there. It was just about eleven o'clock.

When she came out, she again asked if we were going to ruin her. I said I didn't know, but I wouldn't know what we would do until we had the facts. She then told me this story.

That is the story I have recounted about the Kentucky Derby and about what she said occurred there.

Senator BAYH. Do you have any information, did she tell you the timing of the alleged fix?

Mr. HUME. Well, what she indicated was——

Senator BAYH. This would have come after the meeting at the Kentucky Derby?

Mr. HUME. Well, the inference I drew was that if ITT was to get any help from Mitchell, it would have come after her meeting with him on May 17. And, of course, Mr. Reinecke's original version of events indicates that he found out some time later that month that there was \$400,000 contribution.

Senator BAYH. Let me go back to try to deal again with the credibility of Mrs. Beard. She started the conversation with the Attorney General just before lunch?

Mr. HUME. Dinner.

Senator BAYH. Just before dinner. They proceeded through the buffet line together?

Mr. HUME. I got the impression from the way she described it that he took her aside. Governor Nunn stood there with them as he gave her this tongue-lashing. Then, after that had been concluded, they went through the dinner line together.

She told me first the Attorney General had been very rough with her, and that afterwards very sweet, after they concluded the conversation. That's the words she used, he had been very sweet to her.

She also spoke with great affection of Governor Nunn. She said it was a terrific whipping she took from the Attorney General and she blessed him really for staying there with her at the time. It was really a favor that he did for her, she felt.

Senator BAYH. Did she say how she felt about the conversation with the Attorney General?

Mr. HUME. She said, "Yes, she was really shaken up by it," surprised, taken aback at this tongue-lashing. She got the feeling that, she felt he was a kind of awesome figure. She had never met him before and has never talked to him since. I gather that from every version that I heard. She told me that she was looking forward to the meeting with anticipation and some awe with the man she knew to be of such influence and whose advice was so highly regarded by the President.

Senator BAYH. Did she give you any—you talked about her being awed, shook up, as you described it. Did she say anything about having a heart attack or passing out?

Mr. HUME. Dr. Liszka came in. She introduced me to him and he stood there rather quietly.

She said, "You know, I'm about the only lobbyist who needs a traveling physician." There was some light comment along that line.

But she said, "You know, I had one of these heart attacks after the Kentucky Derby—do you remember that, Victor?"

He said, yes, he remembered how shaken she had been by the event.

And during the course of her discussion of this, when she said that she had been shaken up by it, I said, "You mean that even though you were so shaken up by this you had the composure to come back and bargain with this guy a little bit?"

She said yes, that was right, she had managed to keep her cool so that she could discuss these terms with him and have this conversation.

Senator BAYH. When did this light heart attack occur?

Mr. HUME. I had the impression it must have occurred not at the dinner period, there was no indication from what—she was talking about it in the context of talking to Dr. Liszka, which led me to think he must have treated her for it, which led me to think it must have happened up here. She didn't give me any indication that he was down there, and there's nothing that has occurred since to indicate that it was.

Senator BAYH. Did he or she—he being Dr. Liszka—say anything about Mrs. Beard having a heart attack that felled her, according to Governor Nunn's testimony—of course he said he did not see this, but he had heard it, that she was lying prostrate on the floor someplace as a result of the heart attack?

Mr. HUME. She told me nothing to that effect and Dr. Liszka, while he was there, said nothing to that effect.

Senator BAYH. Is it reasonable to believe, as much as she told you all these other things, that if she had that kind of reaction, from the confrontation with the Attorney General, the tongue lashing, that she probably would have mentioned it?

Mr. HUME. As I say, she did mention that she had a heart seizure or heart attack, as she calls them, after the Kentucky Derby. But, as I say, it was in the context of her conversation with Dr. Liszka. I just assumed that—he remembered it. She said, "You remember, Victor, how upset I was?" He said, "Yes, you were really upset," or something like that. I just more or less assumed it must have been something that came over her when she was up here. I had no indication from her conversation that she was taken ill down there, although this might have been because of an unwarranted assumption on my part that she was taken ill out here afterward.

I simply didn't press her on this, Senator Bayh. It was a point. There was nothing in the conversation that suggested to me that it happened there, and, therefore, I didn't deem it to be something I ought to go into there.

Senator BAYH. Do your working notes there contain any reference to her reference to the doctor about the heart attack?

Mr. HUME. Let me check. (Checking.)

No; there is nothing here about it.

Senator BAYH. But there is reference to the fact that she was physically able to get a tongue lashing from the Attorney General, go through the buffet table, and then sit down and continue through dinner discussing this with the Attorney General?

Mr. HUME. That's how she described it to me; yes, sir.

Senator BAYH. Have you ever had a chance to talk to the good Dr. Liszka?

Mr. HUME. Well, I spoke to him twice after she—incidentally, he took my phone number and name the night we were there. I anticipated he might want to call me to give me some indication that—it was clear from the whole atmosphere of the house there and Mrs. Beard's attitude, that she felt that our getting this memo was a catastrophe—I sort of suspected that Dr. Liszka might be calling me to say, Mr. Hume, this woman is sick and this could have a very damaging effect on her. But I never heard from him.

The only time thereafter that I spoke to him was when I tried to call him after she had gone to Denver and I was just trying to stay on top of events. I called him, thinking he was here, and he returned my call from Denver. I spoke to him from Denver last Saturday night. He said he wanted to talk to me, or indicated that he would like to talk to me.

I contacted him the next day after he had gotten home. It was quite late on Sunday when I did contact him, and he said he was going to Doctors Hospital to make some room calls, and if I met him there, we could have a talk. So I met him there, and that's when he reiterated to me that things he had said about what she had said about how the company treated her in New York.

Senator BAYH. At any time when you were talking with Dr. Liszka, did he describe this heart attack that Governor Nunn said Mrs. Beard had?

Mr. HUME. No; I didn't have any idea that she had had the heart attack down in Kentucky until Governor Nunn testified here that that was the way it came about. All Dr. Liszka said when I asked him again about that, I did bring it up with him about the Kentucky Derby heart attack and her being upset, and he said, "Yes, she was sick after that and she did get quite a tongue lashing, she had gotten quite a lecture from Mr. Mitchell."

Senator BAYH. Was Dr. Liszka at the Kentucky Derby with her?

Mr. HUME. No. No he was not. He said he was not.

Senator BAYH. Now, the doctor's discussion about Mrs. Beard and her health, when he testified before the committee, was that her heart was in such bad shape that it might have prevented her brain from getting adequate oxygen, and thus what she had said from time to time might have been irrational. Did the doctor ever mention that to you?

Mr. HUME. He never said anything to that effect to me. In fact, everything that he said about her to me was quite upbeat. He spoke of her as a warm-hearted person. I said, "you know, I understand from sources close to the company that they're going to try to discredit her and to make it appear that this memorandum did not, was not written at the time that the date on it indicated." He said, "Aw, that was ridiculous, why would she do that later on? It makes no sense." So I had no impression from Dr. Liszka that he thought she was subject to fits of irrationality or anything like that.

Senator BAYH. Mr. Chairman, I think my time has been utilized. I'll yield to Senator Tunney and come back to this later.

Or Senator Gurney.

Senator GURNEY. Thank you, Mr. Chairman.

Back to this memo. I'm interested in it because I was the Senator who asked that it be produced for the record yesterday. When did you furnish this memo to Senator Kennedy's staff?

Mr. HUME. My memo here?

Senator GURNEY. Yes.

Mr. HUME. It was the night before the first hearing before this committee on this matter. I guess it would have been Wednesday night before the Thursday morning hearing, a week or 2 weeks ago.

Senator GURNEY. You mean last week?

Mr. HUME. Last week, I'm sorry.

Senator GURNEY. Your memory didn't extend until last week that you had——

Mr. HUME. It did not immediately extend until last week, Senator Gurney.

Senator GURNEY. When did you recollect?

Mr. HUME. When I was casting about this morning down at the office realizing that I had left it behind inadvertently. I thought perhaps they had made a copy of it and called immediately to find out if they had, so that I could get one to testify.

Senator GURNEY. They said, "Yes, you did give it to them and you could have it back?"

Mr. HUME. I said, "If I had, would they please make a copy for me so I could testify here."

Senator GURNEY. You had a copy this morning, didn't you?

Mr. HUME. I did yesterday, Senator Gurney, but I inadvertently left it with my other coat this morning and didn't have it with my effects and things I was bringing down. When I got to the office on my way here, I realized I didn't have it and wanted to——

Senator GURNEY. You just reached in your briefcase and got a copy of it?

Mr. HUME. That was the copy Senator Kennedy's people brought down to me this morning, as I discussed with Senator Cook.

Senator GURNEY. Did you discuss the memorandum with any of Senator Kennedy's staff?

Mr. HUME. They asked me some of the same questions that I have been asked here, about how I went about getting this story and what occurred, and I had occasion to refer to it at that time, just as I have done here.

Senator GURNEY. Did you suggest to them a line of questioning to you?

Mr. HUME. I did not.

Senator GURNEY. Well, why was it, when you knew that Senator Kennedy had the memo and I ask it be produced for the committee, you so vehemently refused it? Obviously, Senator Kennedy hadn't told the committee about it, because otherwise——

Mr. HUME. I never spoke to Senator Kennedy about it, Senator Gurney. I tried to make clear yesterday and again this morning, that I have no objection whatever to this document being made a part of the record, or that anyone in this committee, anyone in the Senate, or anyone of the public, see it or read it. It was merely the

manner in which it came up that gave me, as more of a reflex action than anything else, some cause for concern. I have no desire to keep this document from this committee, and I hope I have made that clear.

Senator GURNEY. I am certainly glad we have gotten over that.

How about these other documents, because they also came up yesterday. What light do they shed on this case?

Mr. ANDERSON. For the most part, these other documents do not deal with this case. As I testified a moment ago, we do have the secret transcript of Congressman Cotter's testimony before the SEC. That does not affect the immediate thing we are discussing here, but it does bear on the whole light of the Hartford-ITT merger.

I think I have already said that these documents or any information I can give, including the transcript, or my services, will be made available to the committee to investigate ITT.

Senator GURNEY. How many documents are involved?

Mr. ANDERSON. I have not counted them. I would estimate about two dozen.

Senator GURNEY. Do you have them with you?

Mr. ANDERSON. I do not.

Senator GURNEY. Where do you keep them?

Mr. ANDERSON. In my files.

Senator GURNEY. Where are your files kept?

Mr. ANDERSON. I have some files kept both at home and in the office.

Senator GURNEY. You keep files both at the office and at home?

Mr. ANDERSON. Yes.

Senator GURNEY. Do you keep files anywhere else?

Mr. ANDERSON. No.

Senator GURNEY. Do you have files in storage anywhere?

Mr. ANDERSON. No. Well, Boston University asked for some of my files. I can't recall now whether I sent them. I had packaged some to send to them, but I do not think they have gone up yet.

Senator GURNEY. Well, except for your office, your home, and possibly Boston University, there are no files kept anywhere else?

Mr. ANDERSON. No.

Senator GURNEY. Back to these documents—I understand about the transcripts—do any of the others bear on this antitrust case?

Mr. ANDERSON. No; not on this specific antitrust case.

Senator GURNEY. What about any of these other documents? Have they been furnished to any member of the committee or any staff of the committee?

Mr. ANDERSON. They have not, but I have already offered to cooperate with the committee and will review these documents with the committee as soon as I'm satisfied that you are serious about investigating ITT.

Senator GURNEY. Now, I would also like to get back to one or two other questions I had yesterday, because I was not entirely sure of the answers. You did say that in securing sources of information, no payments were made to anybody. I understand that that was the testimony.

Mr. ANDERSON. Except to newspapermen, who, in their professional capacity, when I have used them to—

Senator GURNEY. Now, what would you term to be an investigator? How would you describe that person?

Mr. ANDERSON. Well, someone who is professionally hired on very rare occasions, a consultant, somebody who is a specialist in any area we're going into. Specifically, we have done some stories on banks and I have paid money to get the services of a consultant.

I do not recall immediately any instance that I have paid an investigator, but I would if the occasion arose. I do not recall offhand that it has arisen.

Senator GURNEY. Well, in the case of the consultants, they are professional-type people who are expert in the field of investigation. That is their profession. Is that what you mean to say?

Mr. ANDERSON. Now they are people who would have both an ability to dig out facts in specialized fields and an ability to interpret those facts.

Senator GURNEY. Would they include somebody on the staff of, say, an agency or a committee of Congress?

Mr. ANDERSON. No.

Senator GURNEY. Or an agency of the Government?

Mr. ANDERSON. No.

Senator GURNEY. The so-called reporter, the investigative reporter type, are they all newspaper people? That is their profession?

Mr. ANDERSON. Whatever newspapermen I have paid to work on stories are professional newspapermen, but this is very rare. This has happened very seldom.

Senator GURNEY. Would you use a newspaperman, for example, to get information who might, in turn, pay somebody to get the information?

Mr. ANDERSON. I don't think I would pay them enough.

Senator GURNEY. Do you know whether that is ever done?

Mr. ANDERSON. I don't know.

Senator GURNEY. How many staff members do you have to do investigation for you?

Mr. ANDERSON. I have three full-time reporters, and I have an investigator who works for me full time.

Senator GURNEY. Do you have more than one part-time person?

Mr. ANDERSON. Well, interns; yes. We have some college interns that come and work for us.

Senator GURNEY. But these are temporary?

Mr. ANDERSON. Temporary, and they do work part time, Senator.

Senator GURNEY. Mr. Hume, have you ever paid anybody for any information in connection with your work for Mr. Anderson?

Mr. HUME. No.

Senator GURNEY. I can't remember whether I asked this question or not yesterday, and I do not like to repeat it, but the transcript is not available. I did ask whether you used a tape recorder in connection with Mrs. Beard. Now, I'm going to ask you, do you use tape recorders, or have you ever used a tape recorder in any of your interviews with people?

Mr. HUME. I think of one time I did use a tape recorder—never since I've been with Jack, however. I think a tape recorder can be very useful, but I always found that it was a cumbersome thing, as well, because it was unselective. You have to sit down and transcribe it all.

Senator GURNEY. What about recording devices? Have you ever used them?

Mr. HUME. I did at one time use a tape recorder to tape record some phone calls, but this was when I was with the United Press, and I have not done that since. I did tape record some interviews, and at least one long rally meeting when I was working on my book about the United Mineworkers. I went down to West Virginia.

Senator GURNEY. What about you, Mr. Anderson? Have you ever used a tape recorder in connection with a telephone conversation?

Mr. ANDERSON. No; I don't recall ever having done that.

Senator GURNEY. Mr. Hume, in your colloquy with Senator Cook about the memorandum, I think I recall the testimony was that Mrs. Beard said she gave it to Mr. Merriam. Is that correct?

Mr. HUME. No; I didn't say that. What I think I said was that Mrs. Beard told me that when she consulted with Mr. Merriam about about this, after we had obtained the memorandum, she consulted with him about it before she met with me at her home—you see, there was a period of a day there when she had time to check with her associates and friends about this—she said that his reaction was that he didn't know what he had done with it.

Now, the assumption, of course, obviously, would be that he had gotten it, but because that inference was so obvious, I didn't go into the mechanics of how it was transmitted to him and exactly whatever else——

Senator GURNEY. Didn't Mr. Merriam give you the memorandum?

Mr. HUME. I can't testify to that, because it was not I who received the memorandum.

Senator GURNEY. Did he give it to you, Mr. Anderson?

Mr. ANDERSON. I don't think that I'm going to permit, by the process of elimination, you to delve into my sources.

Senator GURNEY. That was the only eliminating I was going to do, and I thought it was important because there apparently was an animosity between Mrs. Beard and Mr. Merriam. You did testify that Mrs. Beard did not give you the memorandum. I thought you might be willing to tell the committee that Mr. Merriam did not.

Mr. ANDERSON. If that is your last question on my source, I'll answer it.

Mr. GURNEY. Well, I don't know that that has much bearing on it. I really think the important thing, Mr. Anderson, here is that we do get as much information as we can, and certainly, testifying that Mr. Merriam didn't give it to you would in no way prejudice any source that might have given it to you. I am sure you want the committee to get all of the information it can.

Mr. ANDERSON. Mr. Merriam, I am sure, is going to testify, and I'm sure you can put him under oath and ask him whether he gave me the document. I'm not going to engage in any colloquy that is intended to try to give out the source of my information. The memo itself has been authenticated. We have testified in great detail about that.

Senator GURNEY. What possible harm could there be if you simply told the committee that he didn't give it to you?

Mr. ANDERSON. As I've said, I'm not going, through the process of elimination, to help you identify this source. He'll be here.

Senator GURNEY. You refuse to testify whether he did or not. I don't have any further questions.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. Mr. Hume, as I understand it from your statement, this was a meeting in San Diego in which Congressman Bob Wilson and Bill James——

Mr. HUME. I'm sorry about that Bill James, Senator. I later determined that Bud was the name, and I got it wrong.

Senator ERVIN. Bud James?

Mr. HUME. Bud James.

Senator ERVIN. And Mrs. Beard said she was there?

Mr. HUME. That is right, Senator.

Senator ERVIN. Was any other person present, as far as you know?

Mr. HUME. She said that Harold Geneen, the president of I.T. & T., was there.

Senator ERVIN. Have you made any investigation with respect to the provisions of the corporate charter of the Sheraton subsidiary of I.T. & T., as to whether it is authorized to make donations of what is, in effect, the stockholders' money to finance political conventions?

Mr. HUME. No; I have not, Senator Ervin. It might be a worthy endeavor, however.

Mr. ANDERSON. I have made some inquiries, but they're incomplete. It's my understanding that there are stockholders who are going to challenge that authority, and that they intend to do it according to law.

Senator ERVIN. I'll address this question to either one of you. Did either one of you get information as to the exact terms of the offer of the Sheraton Hotel division of the I.T. & T.?

Mr. HUME. Senator Ervin, she, Mrs. Beard, indicated that what Mr. Geneen had said was that, we'll underwrite, meaning the I.T. & T. Co.; he had called—I'll give you the full explanation of how she described it.

She said that they were sitting at dinner outdoors on the occasion of their annual meeting, and that she had been doing spade work on this convention idea for some months, and that she thought that she had concluded, along with Lieutenant Governor Reinecke, that it would be feasible to have a convention such as the Republican Party was planning in San Diego, and that she had sensed all along that the company would back her up and would try to help to bring this about. She felt that this was her project. She said that she brought it up at dinner and that Harold Geneen responded immediately and enthusiastically, well, that's a good idea, I can't remember exactly, it was so far removed, said that that's a good idea, we'll support it, we'll underwrite it.

Congressman Wilson was there, and although she indicated that she and Congressman Wilson were very good friends, she had not shared the secret of her plans with him, and therefore, he was surprised about it.

The general idea that I got from her account of it was that there was a general discussion about this and some idea of the amount of money that might be needed to out-bid the other two cities that seemed to be the leaders in seeking this convention was discussed, and that Mr. Geneen made a general promise that we'll provide several hundred thousand dollars to at least stand in, as it was put to me, to underwrite it to that extent, hoping it would not be that much, but would do as much as it turned out to be necessary to insure that it could be done.

Senator ERVIN. I think I'm safe in assuming that neither I.T. & T. nor the Sheraton Hotel division are eleemosynary institutions, but on the contrary are commercial enterprises?

Mr. HUME. I believe so; yes.

Senator ERVIN. Did Mrs. Beard inform you as to what quid pro quo the Sheraton Hotel division of the I.T. & T. expected or hoped to get out of underwriting the San Diego convention?

Mr. HUME. Well, the thrust of her explanation to me was that one of her assignments was to drum up business for Sheraton Hotels and that she felt that this would have that effect and that Mr. Geneen agreed enthusiastically with her.

Senator ERVIN. Now, I understand that Mr. Geneen is to appear and testify and also Mr. Merriam?

Mr. HUME. Yes.

Senator ERVIN. Mr. Merriam, he was a lobbyist for I.T. & T. interests above Mrs. Beard?

Mr. HUME. I might be wrong, Senator Ervin, but I don't believe he is a lobbyist. I believe he's the director of the Washington office, which, of course, is the office that has all the lobbyists.

Senator ERVIN. She also told you that former Governor Nunn advised her that she and John Mitchell were to be invited to the affair which Governor Nunn was giving in connection with the Kentucky Derby?

Mr. HUME. Yes, sir; that is what she told me.

Senator ERVIN. And she informed Mr. E. J. Gerrity, New York Public Relations man, of that fact?

Mr. HUME. She did. She said she informed Mr. Gerrity of it in the memorandum which—she told me her copy of that memorandum is one of the documents that went through the shredder.

Senator ERVIN. And she informed you that Mr. Gerrity suggested to her that she take this opportunity which this social affair would present her to contact Attorney General Mitchell about the settlement of the I.T. & T. case?

Mr. HUME. Well, Senator Ervin, to be a little more exact about that, I think that the way she put it to me was that she sensed immediately that this would be such an opportunity and communicated that thought to him, and that he returned to her, not by memo, but by phone, and gave her some general ideas, about what to seek if she did indeed get into a conversation with the Attorney General in which she might be able to argue over terms.

Senator ERVIN. Now, Mr. Gerrity, is he an official of the ITT, or more of a public relations man?

Mr. HUME. I believe he is senior or executive vice president for public relations and that that gives him general jurisdiction over the Washington office, although he's in New York.

Senator ERVIN. Thank you.

The CHAIRMAN. Senator Cook?

Senator COOK. I yield to Senator Mathias who has some questions.

Senator MATHIAS. Mr. Anderson, you and I know the members of the committee spent 6 or 7 interesting hours here in this room yesterday.

Last night we shared 60 or 70 seconds in my living room about 11 o'clock. On reflection, maybe the 60 or 70 seconds you and I and some

millions of other Americans shared last night have been as important, maybe more important, than the 6 or 7 hours we spent here during the day.

One of the things you said last night was that Mr. Kleindienst and Judge McLaren had taken the fifth.

Mr. ANDERSON. I know what I said. I did not get to watch myself, so I don't know how much of the interview appeared on television, but I'll be glad to recount it for you.

Senator MATHIAS. Well, that was the statement.

Mr. ANDERSON. I said that Mr. Kleindienst and Mr. McLaren had had a lot of trouble remembering and that, whenever an embarrassing or awkward situation came up, quite often they would say, "to the best of my recollection," or "I don't specifically recall." I suggested that this was Government officials' way of taking the fifth amendment. Since they don't take the fifth amendment, they just don't remember what they would prefer to take the fifth amendment on.

Mr. MATHIAS. Well, I was interested in that because there had been a circumstance earlier in these hearings that had impressed me with Mr. Kleindienst's openness in one specific circumstance, which I called to the attention of the committee when he had been criticized by Mr. Clarence Mitchell of the NAACP, in relation to the failure of the Justice Department to appoint Ambassador Ferguson to the bench. It happened that when Mr. Mitchell made the charge, sitting where you are sitting, Mr. Kleindienst was still in the room, and a most extraordinary scene occurred.

Mr. Kleindienst came back to the witness table and there was an exchange among members of the committee and Mr. Mitchell and Mr. Kleindienst on the subject of Ambassador Ferguson's qualifications for the bench and the reasons he did not get appointed. I think it was one of the most remarkable scenes of open exchange among witnesses that I have ever seen before this or any other congressional committee.

Mr. ANDERSON. That may have been a little less sensitive than these other matters, and he may have had no need to take the fifth on that.

Senator MATHIAS. Well, it was a very sensitive matter to Mr. Mitchell, and sensitive so far as I was concerned.

Mr. ANDERSON. Now, in the matter before us, Senator, his memory was very, very bad about his conversations with people dealing with the ITT matter. He had a very hazy recollection.

Senator MATHIAS. Where would you think the areas here would be?

Mr. ANDERSON. Let me see if I can help you on that. I got hold of one of the—he said after having acknowledged that he had a discussion with Mr. Rohatyn, he said:

Neither during this period nor at any time while the cases were pending, nor during—

I'm in the wrong place. I apologize. I picked up the wrong paper, but let me try to remember it and I'll stand corrected, if my memory is not verified by the record.

I believe that he said before the committee that he had had no discussions with other ITT officials before meeting Mr. Rohatyn. After that, it developed that he had had a discussion with a Mr. Ryan; it developed that he had discussed this case with a lawyer named

Walsh; that he had received a letter from that lawyer, and the lawyer had referred to earlier discussions, in his letter; and that he had also discussed it with the Solicitor General.

Senator MATHIAS. Thank you. I just wanted to get what you felt was the basis of that statement.

That's all I have.

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Hume.

Senator TUNNEY. Mr. Chairman.

Senator HART. I'm sorry. John, go ahead.

Senator TUNNEY. I'm so far down on the list it's hard to see me.

I was wondering, Mr. Anderson, or Mr. Hume, if you've done any investigatory work with respect to Mr. Ramsden?

Mr. ANDERSON. Yes; I had done some. I was not as fast or as thorough as the New York Times, which beat me to it and published in more detail than I had the fact that Richard Ramsden played a role. I was aware that he had played a role in the case, I was aware that he was associated with Mr. Flanigan, that he had been on to the case by Mr. Flanigan. And I did investigate Mr. Flanigan's role in this case, because I considered it to be quite significant.

Senator TUNNEY. Can you give us any indications what that investigation developed?

Mr. ANDERSON. Well, I, of course, found that Mr. Flanigan had intervened in sending over to the Justice Department his appointed expert who, in 3 days, came up with an opinion, a financial economic opinion, that overruled the work of the Antitrust Division's own economists who had spent over 2 years on the case.

I found that from talking to my White House sources, Mr. Flanigan customarily intercedes for large corporations, when they get in trouble in Washington. My White House—in an effort to pin this down, I asked my White House sources for some evidence of it; I asked specifically whether Mr. Flanigan kept memos on these interventions, and I was told that he did not, that he did it all by phone, but that he was, in fact, the administration's sort of Minister Without—fixer, let's say—Without Portfolio for large corporations.

Senator TUNNEY. Did you investigate the question of whether or not Mr. Ramsden filed with the Department of Commerce a statement regarding the approximately \$200,000 worth of ITT stock that was held in a management portfolio by his firm?

Mr. ANDERSON. I didn't investigate that at all.

Senator TUNNEY. The chairman of the committee today introduced into the record a statement by the Department of Commerce with respect to Richard Ramsden. Just to read from it, it states that:

On April 27, 1971, the Bureau of Domestic Commerce (BDC) appointed Mr. Richard Ramsden a consultant. This appointment resulted from the fact that BDC needed an expert to review its capacity for financial analysis and from the high regard in which Mr. Ramsden's abilities were held by the Director of BDC. In connection with his appointment, Mr. Ramsden completed the standard Federal forms required for consultancy status. Mr. Ramsden has been paid a total of \$363.00 plus \$88.00 for expenses by the Department.

On April 27, 1971, Mr. Ramsden came to Washington to study BDC's financial analytic capabilities. He filed a report on May 13, 1971, and was paid \$121.00 plus \$88.00 for expenses for this service.

In late May 1971, Mr. Ramsden informed the Director of BDC that at the request of Peter Flanigan he had done some additional financial consulting work for the Federal Government. He asked to be paid through BDC in order to avoid

refiling the rather lengthy forms already completed and filed with the Department of Commerce. He requested payment for the two working days he had been kept entirely away from his private employment. This request was authorized and Mr. Ramsden was paid \$242.00. The pay authorization reached the payroll office after the cutoff date for May 29 pay period, and was entered for the first two working days thereafter, June 1 and June 2. This is the usual procedure when it is determined that pay is due after cutoff time required by the computerized payroll system.

The statement from Commerce does not indicate whether or not Mr. Ramsden did file a statement as required by the Executive order indicated for possible conflict of interest. I was wondering if you had any independent information on this?

Mr. ANDERSON. I do not.

Senator TUNNEY. Mr. Hume, do you?

Mr. HUME. No, Senator; I can't comment on that at all.

Senator TUNNEY. The question arises whether or not in doing consulting work for the Justice Department, or for Commerce, that really for the Justice Department on the ITT case, the refiling would have required a statement of the ITT stock portfolio that is held by the company, and the reason it went to the Department of Commerce was because it would not be necessary to supply additional information that may have been required to be supplied when the first consultant work was done. I just raise that as a possibility.

I would just like to ask Mr. Hume, with how many people did you discuss directly the case presently before us in preparing the story?

Mr. HUME. I think I can provide that information in exact terms, if I have a little moment to review it. I cannot say immediately off-hand how many, but I can give you an estimate. I would say, I would estimate I discussed this—in terms of seeking information for the story about the confrontations in the office, I assume you mean?

Senator TUNNEY. Yes; I'm thinking of just the people that you've talked to in developing your story. You talked to Mrs. Beard, you attempted to get hold of—

Mr. HUME. Would it be helpful, do you think, to try to go through it and pinpoint just who?

Senator TUNNEY. Yes.

Mr. HUME. Of course, I spoke with Mrs. Beard. I failed to reach Mr. Reinecke, but I spoke with Mr. Gillenwaters. I failed to reach Mr. Mitchell, but spoke with Mr. Hushen. I spoke with Congressman Wilson. I sought Mr. Merriam but failed to reach him. I spoke to Mr. Rohatyn, I spoke to Mr. Parma.

Senator TUNNEY. Mr. who?

Mr. HUME. Leon Parma of San Diego. I spoke to Jack Gleason, I spoke to Mr. Timmons, White House staff. I spoke to Dr. Liszka. I spoke to Judge McLaren. I spoke to, for what it's worth, I also spoke to one of Judge McLaren's aides, in an attempt to relay a question, but I had the answer the first time. I spoke to Governor Nunn.

I want to point out that I spoke to Governor Nunn on the memo alone. This was before I had had an opportunity to review it with Mrs. Beard at length in her home. Thereafter, my attempts to reach Governor Nunn failed.

Senator TUNNEY. At the time that you spoke to Governor Nunn, did he indicate that he had already heard about the memorandum from Mrs. Beard?

Mr. HUME. No; he did not indicate that he had, and I don't know if he had or not. I do know that Mrs. Beard did speak to him.

I had really asked him only about the substance of the memo. I read to him the sentence that referred to him and sought his comments. I think it was quoted in our first column, words to the effect, I don't know anything about the settlement and I don't know anything about the convention. So that was the end of that. When I asked, his words were to the effect, I don't know what conversations she could be talking about. But I couldn't be too specific about when they were, because I really hadn't gone into it at length with her. I hoped I might be able to reach him later and did not. But, apparently, according to Mrs. Beard, she spoke to him and got the response I spoke of.

Senator TUNNEY. But you did get definitely from him that he did not know about the conversations between Mrs. Beard and Mr. Mitchell, if any conversations had taken place?

Mr. HUME. It would be unfair to him to say that he gave me that information, because I didn't know about it at the time. When she began talking about the Kentucky Derby the following night at her home, that was the first I knew of it. I had no idea it had transpired. So the questions I was asking him referred to the memorandum, if he knew about it. Apparently, he did know about their, at least, meeting at the Kentucky Derby. He didn't volunteer that. But it would be unfair to him for me to say that he told me he didn't know, or gave the impression that he didn't know about that contact, because he didn't say that.

Senator TUNNEY. What other individuals did you talk to in preparing the column?

Mr. HUME. I'm trying to think. I did speak to Bernie Goodrich of ITT's Washington office, where I was trying to determine whether there was any truth to Mrs. Beard's report that these documents had been shredded. And, of course, at the time I went to see Mrs. Beard in her office, Mr. Goodrich met me there and sat in on all the conversations.

Also, Jack Horner of the ITT Washington staff was there.

So I spoke to them, although casually in the case of Mr. Horner.

Senator TUNNEY. In the sixth page of your memorandum, at the bottom, you indicate that she—apparently Mrs. Beard—"she said the PR types I had seen the day before had told her to get out of town and stop talking to me."

Did she specify who the PR types were?

Mr. HUME. Well, it seems to me in the context in which that came up, which was her beginning our conversation by saying words to the effect that, I would have told you all of this yesterday but those PR guys were there and every time I tried to say something, they would start to cough loudly or kick me in the legs. She said that one of them would kick her under the table, inhibiting her conversation.

I had felt at the time that it was an unpromising atmosphere for a frank discussion on something of this kind and I was not able to press the matter other than to confirm the authenticity of the document. The impression of what she was saying seemed to be that these guys wanted me to get out of town.

Senator TUNNEY. She didn't recall the names?

Mr. HUME. She didn't mention them specifically, but that is the inference I got. I don't want to be unfair. It's possible she talked to somebody else. I don't want to be unfair, but that is the impression

that I had. She also said another idea that was given to her by the people in the office was to say that she made up the whole section of the memo concerning the Attorney General.

Now, one thing that is in my memo, I believe, or at least it is in my memory now, that I wanted to mention, is she told me that the night I spoke to her, that same day or that evening before I arrived, she had tried to reach Mr. Gerrity, and he was on vacation at that time, and she had either reached him or he had reached her. She said Mr. Gerrity's idea of the way to get out of this jam was to give me a great sob story about the difficulty she had had over the years, in hopes that I might feel that this was background for dropping the story.

She was also trying to emphasize to me at that point, Senator, that that Mr. Geneen was not involved in this. The point, as I said earlier, that was the point she reemphasized. She said that Gerrity had said that, you know, Hal never knew about this or words to that effect, to her, and she was offering this as further corroboration of saying that Mr. Geneen did know about it.

I was kind of skeptical about Mr. Geneen's knowing about it. It seemed unlikely that if she had done this and apparently had some success, Mr. Geneen would not have been let in on it.

Senator TUNNEY. Mr. Chairman, wonder if we could ask the Commerce Department for the filing by Mr. Ramsden with the Commerce Department?

It is my understanding that Mr. Ramsden at some place filed a financial statement with the Department of Commerce and, apparently, this was filed prior to the request from Mr. Flanigan for his services.

I wonder if the committee could get a copy of this filing, because inasmuch as we do have an Executive order which requires potential conflict of interest holdings to be filed with the agency for whom you are doing an outside report, it would be interesting to know if such a filing took place in this case.

Senator ERVIN (presiding). I would personally see no objection to that, but I would suggest that you make that request of the permanent chairman rather than of one who temporarily occupies the Chair.

Senator TUNNEY. When I looked over I thought the chairman was here. I'll ask the permanent chairman.

Senator Cook. Might I suggest if Mr. Ramsden is coming, it might be simpler to request of Mr. Ramsden that he bring a financial statement with him, and also reflect the financial statement that was in existence on his part at the time he made a filing with the Commerce Department. That might be easier to accomplish that way.

Senator TUNNEY. I think it would be good for Mr. Ramsden to bring his own financial statement, but I think it would also be helpful to know if he filed with the Department of Commerce the fact that he had a partial interest in a company that had a management relationship or portfolio that contained approximately \$200,000 worth of ITT stock, as is required in Executive Order No. 11322, section 306.

Senator Cook. Would you read the section into the record?

Senator TUNNEY. Yes. The section states:

Each agency shall at the time of consultant, adviser or other special Government employment, require him to supply it with a statement of all their employment. The statement shall list the names of all corporations, companies, firms, State or local government organizations, research organizations, and educational

or other institutions, in which he serves as an employee, officer, member, owner, director, trustee, adviser, or consultant. In addition, it shall list such other financial information as the appointing department or agency shall decide is relevant in the light of the duties the appointee is to perform. The appointee may but need not be required to reveal precise amounts of investments. The statement shall be kept current throughout the period during which the employee is on the Government rolls.

Senator COOK. May I request of the Senator if he takes that to mean if someone is asked to do a job for the Commerce Department or the Treasury Department he not only has to list all of the clients that they may have at that time but has to list all of the holdings of all of the clients?

Senator TUNNEY. My point is, the section talks in terms of trustee, and Mr. Ramsden—

Senator COOK. Even if he were to say he is a trustee, would he have to show all of the securities and all of the portfolios of all of the individuals that he might be trustee for?

Senator TUNNEY. That is not the point. He was doing a study on ITT and the portfolio contained ITT stock. We are not talking about extraneous financial holdings, we are talking about financial—

Senator COOK. How would the Commerce Department or the Treasury Department ever know if they asked somebody to file and gave him a job and said, go back and find out if any of the trustees of, let's say, Chase Manhattan—he's got to find out, of all of the thousands of trusts that the bank is in charge of, whether anybody holds any stock.

Senator TUNNEY. We're talking about a very specific situation where there is—

Senator COOK. I know it is a specific situation.

Senator KENNEDY. Would the Senator from California yield?

Senator TUNNEY. Yes.

Senator KENNEDY. Can't we just get the statement and make our judgment about the appropriateness? I guess that's all you asked.

Senator COOK. The Senator has already made a judgment.

Senator KENNEDY. Why can't we get that and then make a judgment as to its appropriateness? I think that's the question as I understand it.

Senator TUNNEY. That's my request.

Senator COOK. I was merely trying to clarify whether an individual who was asked to do business for the Government has to list, for example, if a man had a thousand trusteeships, all of the securities involved in those trusteeships.

Senator TUNNEY. I would have to study that aspect of the situation, and I do not think it is relevant to the question that I have asked and to the request I am going to make of the chairman of the full committee. I think it is quite clear what we are asking.

I can see that my time is up, so I yield to Senator Hruska.

Senator HART. Mr. Chairman, if the Senator would yield?

Senator TUNNEY. Yes.

Senator HART. Senator Cook, I can understand why you would not want us to express an opinion, but the language—

Senator COOK. I hope that the Senator feels that I have never tried to stifle him from giving an opinion.

Senator HART. I would share with you a desire to avoid, if possible, making prejudgments. But I may be succumbing in this case. If the

filing "shall list such other financial information as the appointment department agency shall decide is relevant in the light of the duties the appointee is to perform," if he is to perform an analysis of ITT, would anybody suggest it is not relevant to find out if he owns ITT or has a——

Senator COOK. Not this Senator, not by any stretch of the imagination, and I think he should and I don't think there is any question about it.

Senator HART. Then I think we should see——

Senator ERVIN. I suggest the Senator make the request to the permanent chairman.

Senator TUNNEY. I shall make the request to the chairman of the full committee when he returns and make it promptly.

Senator ERVIN. Senator Hruska?

Senator HRUSKA. Mr. Anderson, earlier today, you engaged in answering some questions at the hands of Senator Kennedy about the letter of the Honorable Alan Cranston, one of our colleagues, and also another letter of Mr. Rogovin, addressed to the Justice Department for an opinion.

Senator ANDERSON. I have not seen the letters. You'll have to address your question to the Senator.

Senator HRUSKA. He read them and you answered questions on them. They were letters that requested an opinion from the Attorney General. You suggested, as I remember from the notes that I have here—in fact, you testified quite vehemently for a little while—when you were asked what does it mean to you, Mr. Anderson, that letters had been addressed to the Department of Justice and a reply is received saying that it would not be possible to express an opinion on this subject and, therefore, they were denied an opinion; whereas, in the case cited by the Senator from Nebraska yesterday, an opinion was given.

I read from the opening sentence in one of those letters:

This is in reply to your letter of June 30, 1971, requesting a formal opinion of the Attorney General.

That is addressed to Senator Cranston. Then it goes on to say he doesn't feel free to give that opinion.

Now, isn't there a difference in your mind between a case that involves the Attorney General and one that involves the head of a section, or someone lesser in rank in the Department of Justice as Mr. Keeney was, when he wrote to Mr. DeMarco regarding section 610? Would that make a difference to you?

Mr. ANDERSON. It is a difference without a distinction, I would say.

Senator HRUSKA. It makes a difference?

Mr. ANDERSON. Without a distinction.

Senator HRUSKA. It does not make a difference, but it is a distinction?

Mr. ANDERSON. I should have put it the other way around, it is a distinction without a difference.

Senator HRUSKA. So you would deem it just as bad to have people treated different ways whether the Attorney General signed the letter in the one case, or whether the letter was signed by the Chief of the Fraud Section, as it was in the other case?

Mr. ANDERSON. You mentioned this letter of Mr. Keeney, Senator, as sort of the final word on what the law was on this Corrupt Practices

Act. My testimony was that the courts should decide that, not Mr. Keeney.

Senator HRUSKA. I am now asking about the procedures of the Department of Justice and your exception to the idea that Senator Cranston was denied an opinion and Mr. DeMarco got an opinion. You thought that was very, very bad. Do you still think so?

Mr. ANDERSON. Yes, I still think so. I think it is bad policy to turn down an opinion for the Indians or common cause and give an opinion to Republican fund raisers. I think that is bad, yes.

Senator HRUSKA. Well, of course, Mr. Kleindienst does say, "we regret to inform you that under the existing law, Attorney General opinions are authorized to be given only in response to the request of the President of the United States or in response to requests of heads of executive departments," and so on. I imagine he would be governed by that law.

I would think that there is a difference between the Attorney General and the head of the fraud section or some other section because the Attorney General's opinions are formal, they are public, they occupy a certain status. Do you think there is anything to that?

Mr. ANDERSON. Well, I certainly agree with the suggestion that you have made, that the letter you put in has a very limited status. The letter from Keeney, I agree, has an extremely limited status.

Senator HRUSKA. Great exception was taken, not only by you but by the member who questioned you, saying this is awful, because different people are treated different ways and they don't like it and it's bad.

On February 23, a letter was addressed to Henry Petersen, asking for an interpretation of section 610 of title 18, the very section that you said made it absolutely illegal to make the kind of contributions to conventions that we were discussing yesterday. The letter is signed by Mr. Richard Berryman.

Now, he is the ranking surviving partner of a very large and very established firm in Washington and also in New York City. It is presently titled: "Fried, Frank, Harris, Shriver & Kampelman." In there is a request for an interpretation of section 610, title 18, under the terms, or facts, as set forth in the letter. There follows thereafter one page and one line on a third page outlining the situation and the arguments on it. That was dated February 23, 1972.

Here is a typewritten letter addressed to Mr. Richard Berryman signed by John C. Keeney, and it goes on to give the information that was requested and an opinion. I have been informed that there are other instances of this same kind, but there is no different treatment of people asking for similar rulings just because they are Democrats, as some of the partners of this firm are. I venture to say Mr. Berryman is; I don't know. I do know that Mr. Shriver is. I presume he is still a member of the party. And Mr. Kampelman is also a Democrat; that is well known because he is well known in Washington.

If that is true, you would not want to persist in your idea that there is different treatment for different people by the Department of Justice in this regard, would you?

Mr. ANDERSON. It is not clear to me from what you have said exactly how Shriver and Kampelman get into this. How did they get into it?

Senator HRUSKA. They are members of a law firm headed by Mr. Berryman who signed the letter.

Senator KENNEDY. Could we get a copy of the letter, Senator?

Senator HRUSKA. In due time. I have a copy, and I shall see that you get it.

Senator COOK. That is nice of the Senator.

Senator HRUSKA. I will not wait until Monday to give it as has sometimes been the practice by some of my colleagues. I shall give it today.

But the question of different treatment arose and I wanted to set the record straight. I just raise the point because here is a Democratic firm, Fried, Frank, and so forth, presumably a predominantly Democratic firm, asking for and getting an answer. A Republican firm gets an answer. I am informed by sources that I consider very reliable that there are other instances of this kind. I would not want to suggest or charge or even intimate that the Department of Justice answers letters from Republicans and not Democrats, would you? This type of letter at this level? Others have made such allegations, but I believe the facts are to the contrary.

Mr. ANDERSON. I'm moved to make a comment, Senator. That is those look like the Justice Department is giving to Republican Senators some leverage that they're not giving to other members of the committee.

Senator HRUSKA. Yes; because we requested them and had others request them, and certainly it is in the family, the Department would have honored the request from one of our members; they would not have withheld it because there is no reason to withhold it. It deals with a public question, a very, very important question, section 610 of title 18.

I request unanimous consent, Mr. Chairman, that the letter from Fried, Frank, Harris, Shriver, and Kampelman of February 23, 1972, addressed to Henry Petersen, be put in the record and that the reply addressed to Mr. Richard Berryman, the ranking surviving member of that firm, signed by John Keeney, likewise, be put in the record.

Senator ERVIN. Without objection, it is so ordered.

(The letters referred to follow:)

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN,
Washington, D.C., February 23, 1972.

HON. HENRY PETERSON,
*Assistant Attorney General, Criminal Division,
U.S. Department of Justice, Washington, D.C.*

DEAR SIR: Request is made for an interpretation of Section 610 of Title 18, United States Code, under the following facts:

"Citizens for ————" is a voluntary non-profit unincorporated political association formed to support in the 1972 presidential election campaign the candidacy of a national political figure. The association has approached the firm for advice and assistance concerning possible incorporation under the District of Columbia Nonprofit Corporation Act, D.C. Code §§ 29-1001 *et seq.* or some similar state statute. We are satisfied that the association would be entitled under District of Columbia law to incorporate under such statute and that there are no other impediments to such action with the possible exception of the statute concerning which your advice is requested.

Section 610 of Title 18, United States Code provides in pertinent part that:

"It is unlawful for . . . any corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential

electors . . . are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. * * *

Our investigation indicates that the association in addition to other normal campaign activity, collects and expended contributed funds. The question thus presented is whether otherwise legitimate collection and expenditure activity by the association would be rendered unlawful under Section 610 solely because the organization elected to adopt and act in a non-profit corporate form.

While the proscriptive language of the Section 610 is sweeping, we respectfully submit that the evil addressed by Congress in enactment and amendment of this statute was the direct economic intervention of corporate business and labor in the political process. *United States of America v. International Union United Automobile, Aircraft and Agricultural Implement Makers of America (UAW-CIO)*, 352 U.S. 567, 1 L. Ed. 2d 5 (1957). No case decision and no opinion considering or applying Section 610 has been discovered which would preclude the activities of a non-profit campaign committee organized in corporate form, nor is any reason perceived why such should be the law. Whatever the legitimate bounds of Section 610, it is our opinion that the campaign activities of a voluntary group of individuals in collecting and expending campaign contributions for their candidate should not be deemed unlawful under this statute simply because the members adopt and operate under the corporate form for convenience and protection.

We would greatly appreciate your confirmation of our opinion at the earliest possible date.

Should you or your staff have any questions, please do not fail to write or telephone the undersigned.

Thank you.

Sincerely yours,

RICHARD BERRYMAN.

March 6, 1972.

Typed: March 2, 1972.

RICHARD BERRYMAN, Esq.,

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN,

Suite 1000, The Watergate 600, 600 New Hampshire Avenue, NW., Washington, D.C.

DEAR MR. BERRYMAN: This is in response to your letter of February 23, 1972, in which you inquired whether the activities of an unincorporated political association formed and operated solely to support a presidential candidate would be rendered unlawful under Section 610 of Title 18, United States Code, if the organization elected to adopt and act in a non-profit corporate form.

As you point out, the purpose of Section 610 is to prohibit the direct economic intervention of corporate business in the political process. Accordingly, the facts set forth in your letter would not come within the provisions of this statute. However, as you are probably aware, the Federal Election Campaign Act of 1971, which becomes effective on April 7, 1972, extends the "reporting requirements" for political committees to many campaign committees that were previously exempted. This is accomplished by a major revision of the definitions of the terms "election" and "political committees." The term "election" has been broadened to include various primaries. A political committee is now defined as "any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$1,000." The new Act, then, does not contain an exception for "state or local committees" which support Federal candidates and these committees will now be required to file reports under the statute with the designated supervisory officer. Political committees supporting a presidential candidate will be required to file such reports with the Comptroller General of the United States.

Sincerely,

HENRY E. PETERSEN,

Assistant Attorney General Criminal Division.

By: JOHN C. KEENEY,

Chief, Fraud Section.

Senator HRUSKA. Mr. Chairman, that is all the questions I have at the present time. I yield back the balance of my present segment of 10 minutes.

Senator HART. Mr. Hume, I would like to get a clear understanding of the shredding process to the extent that it was described to you.

Mr. HUME. Yes.

Senator HART. Yesterday you identified one document as having been shredded according to the statements given you by Mrs. Beard; is that right?

Mr. HUME. That is correct.

Senator HART. What was that document?

Mr. HUME. That document, according to Mrs. Beard, is the memorandum she wrote to Mr. Gerrity in New York telling him of her impending visit to Kentucky and the upcoming party after the Derby, in which she expected she might have an opportunity to meet the Attorney General.

Senator HART. Did she describe or identify any other documents as having been shredded?

Mr. HUME. Not specifically, Senator Hart, although she did say and spoke with considerable emotion about the fact that they were even destroying some of the documents she was keeping in the office which pertained not to office matters but to personal matters involving her children. She was quite upset by that and distressed by it.

I said, why were they doing this?

She said, the reason they were doing it was that they feared these papers would be subpoenaed once her memorandum became public.

Senator HART. Did she identify the persons who were doing the shredding?

Mr. HUME. She did not identify them beyond saying that they were security personnel from New York who had periodically—it surprised me as a matter of fact, because I wasn't aware that ITT had a security force, other than probably a night watchman. I was curious about that, and asked her who they were. She seemed a little hazy about it. She said, they're these guys who come down from time to time to sweep our phones and check the office security. She said she couldn't identify them by name.

I said, "Who gave them instructions that they be brought into this matter?"

She said, "I assume Bill Merriam, but she didn't seem to be positive about that."

Senator HART. In your inquiries with respect to the arrangements made with the Republican convention group and ITT, what is your understanding as to the nature of it? Is it a guarantee of up to \$400,000?

Mr. HUME. Yes, sir; that is my understanding.

Senator HART. Or a pledge of less than and a guarantee of up to but not——

Mr. HUME. It is my understanding that it is a guarantee of up to \$400,000. The way it was explained to me was the plans for having a convention in San Diego were made and put together considerably more quickly than is normally the case when a city is going to bid for a convention of this kind. Therefore, the kind of fundraising and organization that is required for such a thing really was not able to be done because of the shortage of time. That made it helpful for ITT to say, all right, if you can't do it, if you're not able to pull together the amount of money you need to make a competitive bid in this case, we'll stand in for up to \$400,000.

I subsequently determined that a \$100,000 check had been written, sent to the Convention & Business Bureau in San Diego to be relayed,

if necessary, as part of the ITT contribution to the Republican Party agency involved with the convention arrangements in San Diego.

Senator HART. I think, then, we should await the testimony of ITT as to the nature of the arrangement as they understood it.

Mr. HUME. They have issued a statement saying that they really only pledged \$100,000 in cash and agreed to put up \$100,000 more, but only on a matching basis, if needed, which would seem to square with Mrs. Beard's memo which says, and I quote: "Hal at no time" meaning Mr. Geneen—"told Wilson that our donation would be in services only. In fact, quite the contrary. There would be very little cash involved, but certainly some." But perhaps this \$100,000 check is the "some" cash referred to in the memorandum.

Senator HART. That would appear to be, in fact, a donation or a contribution and not conditioned upon any outside performance or level; the additional beyond that, presumably, would represent a guarantee or a standin?

Mr. HUME. I believe that is right. That is my impression, Senator.

Senator HART. But that, I'm sure, we can get cleared later.

Senator HRUSKA. Would the Senator yield long enough to have inserted in the record at this point the news release of the Republican National Committee made by the chairman of the Republican National Committee, in which he reaffirms the position taken by the vice president of the arrangements committee, Mr. Herman of Nebraska, on this subject, because the information is given regarding the recipient of this \$400,000 and what its destiny and uses could be. This original release is dated November 30, 1971. It spells out very clearly that situation. That is when this thing originally was publicized and, of course, there was immediate and spontaneous reaction.

This other one is dated March 7, 1972.

I ask that they be placed in the record.

The CHAIRMAN. They will be admitted.

Senator HRUSKA. If you want copies, we'll get you copies.

(The news releases referred to follow:)

[News from the Republican National Committee, 310 First Street, S.E., Washington, D.C., Senator Bob Dole, Chairman]

[For immediate release Tuesday, Mar. 7, 1972. Contact: Mike Baroody (202)484-6589] RNC-68.

DOLE REPEATS REJECTION OF SHERATON DONATION TO GOP CONVENTION

WASHINGTON, D.C.—Senator Bob Dole, Chairman of the Republican National Committee, issued the following statement today:

The position of the National Committee has always been and remains the position stated on November 30, 1971, by Mr. R. L. "Dick" Herman, Vice Chairman of the Arrangements Committee for the 1972 Republican National Convention.

Mr. Herman said at that time, "Neither ITT nor its subsidiary, the Sheraton Corp., has offered the Republican Party or the Arrangements Committee any money at all."

"I understand that an offer was made to the San Diego Civic Committee . . . however, the Arrangements Committee feels that it would be improper to take such a disproportionate share of the Republican Party's convention needs from a single source."

Herman said, however, that ITT and Sheraton, like most major corporations would be offered opportunities to advertise in the official convention program.

[The full text of RNC-271 (Star story corrected), with Mr. Herman's statement is attached.]

[For release: Tuesday, A.M., Nov. 30, 1971. Contact: Claudia Baskin (202)484-6690]

RNC-271.

STAR STORY CORRECTED

The Arrangements Committee for the 1972 Republican National Convention has not taken any contributions from either the Sheraton Corporation or International Telephone and Telegraph Company and does not expect to do so, R. L. Herman, vice chairman of the Committee said today.

Herman, who is Republican National Committeeman from Nebraska, made the statement in response to a story in the November 29 Washington Star which indicated that ITT has pledged \$400,000 to help finance the convention.

"Neither ITT nor its subsidiary, the Sheraton Corp., has offered the Republican Party or the Arrangements Committee any money at all," Herman said.

"I understand that an offer was made to the San Diego Civic Committee in order to help San Diego get the convention. If this is so, ITT is to be commended for its civic spirit. However, the Arrangements Committee feels that it would be improper to take such a disproportionate share of the Republican Party's convention needs from a single source."

Herman said, however, that ITT and Sheraton, like most major corporations would be offered opportunities to advertise in the official convention program.

He pointed out that this practice is followed by both the Republican and the Democrat national parties to raise money for their respective conventions. "Proceeds from the program can be used only for convention purposes," Herman said. He pointed out that advertising in the programs is a tax-deductible business expense. "We think that it is entirely fitting and proper that major corporations be allowed to support both presidential conventions openly and forthrightly, just as they are permitted to support any other type of major convention," Herman said.

Senator HART. Let me inquire. It is my fault, I missed the name. Who is speaking and for whom there?

Senator HRUSKA. Senator Dole, chairman of the Republican National Committee, issued the following statement:

The position of the National Committee has always been and remains the position stated on November 30, 1971, by Mr. R. L. "Dick" Herman, Vice Chairman of the Arrangements Committee for the 1972 Republican National Convention.

Mr. Herman said at that time, "Neither ITT nor its Subsidiary, the Sheraton Corp., has offered the Republican Party or the Arrangements Committee any money at all."

I understand an offer was made to the San Diego Civic Committee. . . . however, the Arrangements Committee feels that it would be improper to take such a disproportionate share of the Republican Party's Convention needs from a single source.

Senator HART. I wish that Senator Ervin was here but I know that he has expressed a concern that we attempt to obtain for the record from those who were directly involved both with the convention as a party functionary and the city as a community function—

Senator HRUSKA. Oh, yes. I have no intention of prohibiting qualified authoritative testimony. I suggest that the testimony of Mr. Hume, with all due respect to him, is totally hearsay, absolutely inadmissible in a court of law. This, likewise, would be hearsay, except it is of a little higher degree inasmuch as it is not, as in the case of Mr. Parma, somebody not authorized to speak on behalf of the Republican Committee, but the Chairman of the Republican National Committee and the Vice Chairman of the Arrangements Committee for the Republican National Convention. They are in authority.

Senator HART. It was not to suggest any doubt as to the admissibility of the documents. It was to suggest that maybe we now have

for Senator Ervin's purpose found out who it is that we ought to get in to explain that.

Senator HRUSKA. Oh, Heavens, that has been in the record here since last week.

Senator HART. Maybe my question is, Are we going to get them here? Is he on the list?

Senator COOK. Do we have a list? Has it been delivered yet?

Senator HRUSKA. I have seen no list. Is this a personal, private list, a classified, secret list?

Senator HART. This is the list that was delivered to the chairman yesterday. May I inquire if Mr. Herman is on it?

The CHAIRMAN. No, he is not on the list. Let me clear the mystery up. That was not a full list of witnesses.

Senator COOK. Mr. Chairman, is it my turn?

The CHAIRMAN. Yes. Wait a minute. I don't know about the time.

Senator HART. My only inquiry now is, Are we decided on a man named Parma as knowledgeable about conventions and so on, as associated with a pledge of money? My only question is, let us have them.

Senator HRUSKA. This was put in here a week ago, as I remember.

Senator HART. Then I am a week late.

Senator HRUSKA. The reason I put it in now is because on March 7, chairman Dole of the National Republican Party referred to it. And if I had taken the alternative course and given only the one-page statement of Mr. Dole, referring to Mr. Herman's statement, I am confident that I would be asked, "Why are you secreting and holding back a usable and reliable source of information? Why don't you attach it?" So I anticipated that event and I did it.

The CHAIRMAN. Are you going to get Mr. Herman here?

Senator HRUSKA. If the committee desires him I am confident he would be happy to appear.

Senator HART. Does anybody doubt now the usefulness of hearing from Mr. Herman?

The CHAIRMAN. I think we should get him before the committee.

Senator COOK. Senator Hart, are you through?

Senator HART. I would like to know how much time I have.

Senator COOK. You have had more than 10 minutes, I'll be very honest with you, with all the colloquy that has gone on.

Senator HRUSKA. Some of it is chargeable to me.

The CHAIRMAN. I have been very lenient with everybody on time.

Senator HART. I doubt if I have even matched the use of time.

Do I have time to yield?

Senator COOK. If the Senator wishes to proceed, I wish he would proceed.

Senator HART. If I have time, I shall yield to Senator Kennedy.

Senator COOK. Mr. Chairman, I must confess that this does get just a little bit ridiculous.

Senator KENNEDY. Let's let him talk.

Senator HART. The chairman says that he has been out during part of the period about which I am inquiring.

I must have been the acting chairman and I will rule that I have exhausted my time.

Senator COOK. As always, the Senator from Michigan has acted in the only way he knows how to act and that is the greatest as far as this Senator is concerned.

Mr. Hume, you testified just a minute ago to a question from Senator Kennedy—from Senator Tunney, I think—that you thought it was extremely important that when Mrs. Beard told you she had tried to get hold of Mr. Gerrity, and Mr. Gerrity was out of town, Mr. Gerrity called her back, I think your phrase was that that was extremely important. Is that correct?

Mr. HUME. If I did say that, I didn't mean to say that I thought it was extremely important.

Senator Cook. You said you thought it was extremely important because Mr. Gerrity gave her a couple of ways out, or a couple of suggestions out. I think the record will show you said you thought that was pretty important.

Mr. HUME. If it does, that was a pretty unfortunate choice of words on my part, Senator Cook. I have no particularly strong opinion as to the importance. However, it was something that I had not mentioned before and it may be that I said it was important and something that I could add in the testimony I had given on this matter the day before and important in the sense of being fresh.

Senator Cook. That it was important only in that it was fresh, it wasn't important that somebody from ITT had called her and said, why don't you take a trip, or why don't you give them a sob story? You didn't think that was important?

Mr. HUME. I thought it was, I would say, equally as significant as most of the other testimony I have given about Mrs. Beard, as far as events. I feel this sort of thing must be kept in a similar perspective.

Senator Cook. But it wasn't important enough to put in your notes that you typed out that evening?

Mr. HUME. Senator Cook, I tried to make clear to the committee yesterday that those notes were a very crude document, that they were intended not as an absolute record of what occurred. They were intended as something that I might use to help jog my memory in continuing to work on this story.

I had no idea at the time that I sat down to write those notes, Senator, that I would be called before a congressional committee to discuss these events of that night. I hope that I didn't give the Senator an unfair impression of what I think of that document. I think I even said yesterday that calling it a memo was glorifying it. I still feel that way about it.

It was late, and I was trying as quickly as I could in a late hour to get down as much of the facts as I had fresh in my mind about what occurred to at least have it handy to help my memory. There are some things that occurred that were not in there that stuck in my mind, and I have testified to as many of those as have been responsive to questions. But please understand that I did not make that memo out to be—that was really a very rapid pouring out of my facts as to what had occurred. I did not attempt necessarily to write it out in the order of significance at all. I merely tried to get it down as quickly as I could so I could have something to jog my memory.

Senator Cook. In jogging your memory, however, you did think it was important enough that last Wednesday night you verifaxed a copy and submitted it to Senator Kennedy's office. but you had testified that you—

Mr. HUME. We have been through that.

Senator Cook. Your boss said, I think as he put it, that Mr. McLaren and Mr. Kleindienst were guilty of a form of governmental

fifth amendment when they couldn't remember or couldn't quite recall a particular situation. Would you call this, then, an editorial fifth amendment, or the fact that we were not told by a member of the committee that he had it, it might be a legislative fifth amendment?

Mr. HUME. Senator Cook, I don't recall that I was asked yesterday any questions to which my giving that information would have been the responsive answer.

Senator Cook. May I say, Mr. Hume, there is no way anybody would have asked you that, because you and your boss both refused to give it to us because you said it was privileged and it was the reporter's notes, and you didn't want to submit it to us. I refer you to the extended topic of conversation starting on about page 700 [of the typewritten transcript]. Look, when you were telling us that we were not entitled to it and you weren't going to give it to us you had already given it to a member of the committee.

Mr. HUME. Yes; we have been through that. When I said that, that is true. We have been through that. I think, in fairness, however, it might be worth checking back to note that yesterday afternoon I tried to impress upon the committee the fact that I had no desire to hide this document and the only reason I made any objection to it at all was a reflex reaction of being required to do it.

Senator Cook. Mr. Hume, I would have felt far better yesterday afternoon, when you said you had no objection to giving it to us, if you had said the reason I have no objection is somebody already has it.

Mr. HUME. The point is, Senator, I had said earlier that I was willing to testify as to everything in it. I believe I have testified as to everything in it, and the committee will have everything that is in that memorandum, whether or not I submitted that memorandum, which, by the way, I have done.

I believe, Senator Cook, yesterday afternoon you indicated that you would withdraw your request for it and I thought we had reached an understanding about it.

Senator GURNEY. I made the request, and I never withdrew the request at all.

Mr. HUME. I understood, Senator Cook also requested it.

Senator GURNEY. I made the request of both Mr. Anderson and you.

Mr. HUME. I may not recollect properly. It seems to me Senator Cook asked for it also.

Senator GURNEY. We can go to the record if you want your recollection corrected. I just want to say mine was in and it has never been withdrawn.

Mr. HUME. The document has never been withdrawn.

Senator GURNEY. I just want to get the facts.

Senator Cook. I hope my time is not up, because there is one other question I want to ask.

Mr. Anderson, you said that by using the phrase "to the best of my recollection" Mr. Kleindienst and Mr. McLaren were invoking the bureaucratic fifth amendment. Yet, yesterday, I noted the following responses from you, in answer to questions by the committee:

To me, "I have no recollection."

To Senator Bayh, "To the best of my recollection."

To Senator Gurney, "To the best of my recollection."

Twice to questions by Senator Hruska, "To the best of my recollection."

You have accused Mr. Kleindienst and Mr. McLaren, by implication of hiding the truth.

MR. ANDERSON. Senator, I have nothing to hide. They are the ones who have things to hide. I'm here to tell the truth. I hope the committee is here to get the truth. They are the ones who have been covering up. I have not shredded any documents.

SENATOR COOK. Why don't you answer the question, Mr. Anderson?

MR. ANDERSON. I tell you I have not shredded any documents.

SENATOR COOK. Are you accusing Mr. Kleindienst of shredding documents?

MR. ANDERSON. Mr. Kleindienst by his own admission—

SENATOR COOK. Are you accusing Mr. McLaren of shredding any documents? I thought the only avowal of shredding of documents came from Mr. Hume when he said ITT security people came from New York to Mrs. Beard's office and shredded documents. Where did anybody in the record, either Judge McLaren or Mr. Kleindienst, talk about shredding any documents?

MR. ANDERSON. The question is over?

The answer is that Kleindienst did say that there were a number of documents that he was not going to furnish the committee.

SENATOR COOK. Is that shredding documents?

MR. ANDERSON. I don't see that it makes much difference whether the committee is deprived of these documents by shredding or by Kleindienst's refusal to turn them over. You're the ones covering up, not me. We'll be glad to furnish you anything and everything we have.

SENATOR COOK. Your answer is that you do not wish to answer the question?

MR. ANDERSON. I answered it.

SENATOR COOK. You don't consider that the Federal Government exercising a prerogative to maintain documents, that that constitutes shredding of documents as Mr. Hume testified, do you?

MR. ANDERSON. Senator, I believe that the Federal Government frequently conceals from the public, documents, and I think they do it for self-serving purposes. Whether they use a shredder or use their privileges, their powers and their privileges, to deprive us of that information, I think it is almost irrelevant.

SENATOR COOK. The Senate does the same thing in closed hearings, don't they?

MR. ANDERSON. Yes, much too often.

SENATOR COOK. They do it in executive sessions, don't they?

MR. ANDERSON. Absolutely too often.

SENATOR COOK. We're not in the majority in the U.S. Senate, are we?

But that is an answer of yours; do you consider that, in effect, shredding of documents?

MR. ANDERSON. Again, I see very little difference between withholding a document in one way or withholding it in another.

SENATOR GURNEY. What about withholding names and information of people who furnish information?

MR. ANDERSON. Well, we've gone over that. The first amendment gives us freedom of the press, and freedom of the press, Senator,

would be quite impossible if the Government had the power to make us come before a governing body and divulge the names of our sources. Then we would have no sources.

Senator GURNEY. Did Mr. Merriam give you the memo?

Mr. ANDERSON. Again, if the Senator will agree not to pursue my sources, I'll answer that question.

Senator GURNEY. The Senate does not agree with any witness how to conduct its proceedings.

Mr. ANDERSON. Then I'll go back to my statement that I'm not, by the process of elimination, going to permit this committee to discover my sources.

Senator GURNEY. You refuse to furnish that information about Mr. Merriam; is that correct?

Mr. ANDERSON. I have answered it, Senator.

Senator KENNEDY. Mr. Chairman?

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. There has been some reference to my staff obtaining this memorandum. I want the record to show that the first time I saw the memorandum was yesterday. Actually, I think they deserve some applause for their initiative in being able to get a secret file away from Jack Anderson.

Senator Cook. I'm delighted we found that out.

Senator KENNEDY. I want to say in reference to the letter that Senator Hruska put into the record, as I understand, although I have not seen the letter yet, it is dated March 2—oh, March 6. It is quite interesting that it came out after these hearings and procedures had already been started. And with all the——

The CHAIRMAN. Now, wait a minute. The purpose is there. It refers to a statement made earlier. I'm sorry, I'm wrong. I thought you were referring to the release he put in.

Senator KENNEDY. It came out on March 7 after these proceedings had been started and with all the efforts available to the Justice Department, this is the only document they have been able to come up with. Quite clearly, they must have understood, at least by that time, that the Keeney letter was going to be made available to this committee. So that, I think, is of some interest.

Mr. Anderson, Senator Tunney mentioned the statement by the Department of Commerce with respect to Mr. Ramsden, and he reviewed it. What I would like to do is just refer to one feature of it and see whether you are not troubled, as I am. The early part of it refers to some payments to Mr. Ramsden for work that was done previously.

Then it says in late May 1971, I'm reading now from, I guess, the third paragraph—can we get a copy of this?

In late May 1971, it says, Mr. Ramsden informed the director of the BDC that at the request of Peter Flanigan he had done some additional consultant work. He asked to be paid by the BDC in order to avoid refileing. He requested the 2 days' pay for the days he had been kept away from his private employment. It appears this notice to BDC was after he had done the work, rather than before. Do you remember this the same way?

Mr. ANDERSON. That is certainly the way it reads, Senator.

Senator KENNEDY. So it would seem that the terms of the Executive order about the filing of the conflict-of-interest certificate quite

clearly could not have been observed, since the first notice to BDC by Mr. Ramsden about the work was after the work had already been done. It would appear from just this page on its face.

Mr. ANDERSON. I would agree, Senator.

Senator TUNNEY. Would the Senator yield just on that point?

Senator KENNEDY. Yes.

Senator TUNNEY. At the time Mr. Ramsden did the report on Ling-Temco-Vought, he was working at the White House. Now, the question is whether or not he would have had to make a filing at that time?

Senator KENNEDY. You could be correct. I had thought he was an independent consultant.

Senator TUNNEY. He was a White House fellow at the time he did the Ling-Temco-Vought study. He was independent and working up there in New York at the time that he did the ITT study.

So the question, of course, is when did the filing take place and what was filed? I think that these points are very relevant and I indicated to the chairman of the full committee that I would give him a memorandum over the lunch hour indicating what is it that we want in the way of information from the Department of Commerce. Then the chairman will be in a better position to understand what is required.

Senator KENNEDY. I had understood that at the time of the other thing, he had been an independent consultant, also.

Senator TUNNEY. It is my understanding that he was a White House fellow at the time, but I don't know whether he was being paid by the Government or whether he was a White House fellow on his own pay.

Senator HRUSKA. Would the Senator from Massachusetts yield long enough for me to make a brief comment on the allusion to the letter that this Senator introduced?

Senator KENNEDY. I have not seen the letter myself. I made reference to the date, March 6.

Senator HRUSKA. The inference being that it was hurriedly written, signed, and mailed because of the issue arising in this committee. The fact is that the first letter I introduced did not get into the committee record until yesterday, and that was March 9. This letter was dated March 6. It was typed March 2. A request was made by me to the Department for some recent examples of letters of this type, and they came up with this, so there was no anticipation, nor was there any way of knowing that this situation would arise when this letter was actually written.

Senator COOK. We could find other examples, I'm sure.

Senator KENNEDY. I would think the Justice Department would have tried to get some other examples. They come up with one; it is a recent one. I think it is so interesting when you talk about the response of the Justice Department on these particular kinds of interpretations—as I say, I have not had an opportunity to review the letter such as interpreting sections of the United States Code, particularly as it applies to the American Indian, which they have primary trustee responsibility for. If there is any kind of area where they have primary responsibility for trusteeship, it is with the American Indian. Here they are willing, in a matter of almost hours, or at most days, to send a response to a law firm that handles the President's

legal business, one of whose partners is a key Republican fundraiser, and in the area of the American Indian, they take a good deal of time—the dates indicated in the letter to Mr. Cranston—and refused to give a response.

In the *Eagle River* case, which is probably the most important single decision by the courts affecting Indian water rights in recent times——

Senator HRUSKA. If the Senator would yield.

Senator KENNEDY. I don't yield any further.

Senator MATHIAS. Mr. Chairman, before we break up, I have one request of the witnesses.

Mr. Hume mentioned yesterday a check given by ITT and stating that the pictures of it had been published in the press around the country at various points. I'm wondering if he has any copies of these pictures?

Mr. HUME. No, I don't, Senator Mathias, but I understand that the Boston Herald-Traveler had a picture of the check on its front page in recent days.

Senator MATHIAS. You don't know the date?

Mr. HUME. No.

Senator MATHIAS. We'll ask staff to get it.

Senator COOK. I'll ask the Library of Congress if they can't get it for us.

The CHAIRMAN. We will recess until 2 p.m.

(Whereupon at 12:40 p.m., the hearing recessed to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. Let us have order.

Senator KENNEDY. Just before getting into some of the more detailed questions, Mr. Anderson and Mr. Hume, you have been investigative reporters for a number of years and have established yourselves certainly in this area. And I know that you have given this whole series of circumstances a good deal of thought, and I am just wondering from your point of view what sort of—what additional witnesses or information we ought to think about pursuing in the course of these hearings that you think would be most helpful in ascertaining exactly what happened?

I think in the newspapers over the last couple of days there has been published not a complete list, but a number of the potential witnesses. It is not final. But, I would be interested from your own pursuit of this case, yourselves, whether there are any individual witnesses who you think might be particularly useful or helpful in shedding at least some light on the set of circumstances which we are considering in the course of these hearings.

Mr. ANDERSON. Well, Senator, if I were conducting this kind of an investigation, I would certainly want to talk to everyone who is concerned, and I would want to talk to everyone who could shed any light on it.

The CHAIRMAN. Wait just a minute. Let him think about it and fix up a list and then you give it to me.

Senator KENNEDY. I might just mention some of the ones whose names have been mentioned in here. Certainly I suppose Mr. Ryan, and Mr. Ramsden, and Mr. Merriam, and Mr. Reinecke, and Mr. Gillenwaters, I suppose, are people whose names have come up during the

course, and Mr. Flanigan, I would think. I do not know about Mr. Timmons, for example, whether you think that there is some particular information that he might be able to provide on this. You hear his name talked about occasionally, but what do you, from your contacts and Mr. Hume's, feel? Do you feel there would be any information that he could offer that would be of any special value to the committee?

MR. ANDERSON. Certainly I think the White House people played a role in this, and that role is the one that would intrigue me, as a reporter, most of all.

I would, above all, get Flanigan's story, and Timmons' story to find out, and Ramsden's story to find out exactly what role they played, and how it is that this case was settled on the basis of 3 days or 2 days of work by Mr. Ramsden.

Senator KENNEDY. So, from that, from what you have been able to look into in your reporting on it, Timmons would be an important figure, and Flanigan, as well as Ramsden?

MR. ANDERSON. Yes; and then certainly the ITT people involved, including Mr. Walsh.

Senator KENNEDY. Just slowly. As I understand, we have indicated, or the name of Mr. Geneen has been on the list, and Mr. Walsh, and Mr. Ryan, are the people from, as well as Mrs. Beard, would be the people from ITT that we had indicated.

From your investigation, do you think that there is anyone who you think would be of value for us to hear?

MR. ANDERSON. I do not know the names, but I should think the committee should want to identify those security officials who shredded the document, and have them come here and explain exactly what documents were shredded, and who ordered the documents to be shredded, and why these documents were shredded.

Senator KENNEDY. Who would those people—who would know those people? Who these people were who were involved, besides Mrs. Beard?

MR. ANDERSON. I can only speculate, but from the information available to us from the inside, the order was given by Mr. Gerrity. So, presumably he would know, and then, of course, Mr. Merriam, according to Mrs. Beard's testimony, had some knowledge of this, too.

Senator KENNEDY. So, that would include Gerrity, and Merriam, and Geneen, and Ryan, and Walsh, who are generally connected with ITT, I suppose.

And the other group you have given from the——

MR. ANDERSON. The security people, the security people who were sent down here to cover up the evidence, and as we were told, to prevent documents from falling into the hands of the committee.

I should think that the committee would be very anxious to find out what documents they wanted to keep you from seeing and how many documents were shredded.

Senator KENNEDY. You are personally convinced, and I would ask this of Mr. Hume, that such a shredding did take place? I mean, given the kinds of interviews that you had with Mrs. Beard, you are convinced that that did take place?

MR. ANDERSON. Well, I am convinced because, well, first of all, the circumstances under which Mrs. Beard gave the information, the personal distress that she manifests about having her own private

documents shredded in the process, and then the fact that we did our best to check it out with ITT, and they just refused any comment at all.

It seems to me that if ITT had felt a little more confident of their position, that it would have been very easy for them to have denied it.

Senator KENNEDY. Now, moving out to California, the tie in California, I suppose Mr. Reinecke, whose name has been mentioned, and Mr. Gillenwaters, who is the assistant, who as I understand reported being present at the Mitchell-Reinecke meeting.

I guess that is your impression, Mr. Hume, from your conversations, that he was present?

Mr. HUME. Yes, I think Mr. Gillenwaters was present. That would provide another eyewitness.

Senator KENNEDY. To the meeting in May; is that right?

Mr. HUME. That is when they first said, and they later said September.

Senator KENNEDY. I see. So, if we get Mr. Reinecke and Mr. Gillenwaters, I suppose we ought to invite Congressman Wilson as well.

Mr. ANDERSON. I would think he would be a key witness.

Senator KENNEDY. All right, now, besides those, do you think from the communications you have had with people on the west coast that that more or less rounds it out?

Mr. ANDERSON. Well, you might want to have Mr. Parma.

Senator KENNEDY. Mr. who?

Mr. ANDERSON. From the Convention Bureau here to explain exactly—the exact circumstances of the contribution of the \$100,000 that has already been received, and I am sure that he could add additional enlightenment.

Senator MATHIAS. Would the Senator yield at this moment, just for the purpose of putting something into the record?

Senator KENNEDY. Surely.

Senator MATHIAS. This is a clipping from the Boston Herald-Traveler of March 6, 1972, which carries a photograph which is captioned "Copy of check for \$100,000 which an ITT Sheraton Corporation of America official said yesterday was contributed to a San Diego, Calif., committee, not the Republican National Convention."

The check purports to be payable to the San Diego Convention and Visitors Bureau in the amount of \$100,000. It is check No. 122, issued by the Sheraton Harbor Island Corp. and is dated August 5, 1971.

Mr. ANDERSON. That confirms, Senator, precisely what we said. We said the money had been contributed to the Convention Bureau.

Mr. MATHIAS. May I suggest, Mr. Chairman, that it go in the record at this point.

The CHAIRMAN. It will be admitted.

(The photograph of the check referred to was filed with the committee.)

Senator KENNEDY. Now, does that pretty well cover the west coast, as far as your investigating pursuit of this memo for the people—Mr. Hume, at any time, if you have any other ideas—

Mr. HUME. Well, not concerning the west coast, Senator. I did have one thought, however, and I have tried to avoid interjecting any personal judgments or opinions in this matter. But, I—I hope it would not seem presumptuous of me to make this suggestion.

However, it occurs to me that when Mrs. Dita Beard gives her version of these events to this committee, that this may well be one of the most crucial moments of her life, certainly her recent life, and what she says one way or the other is going to be vital to her personal fortunes and to those of her company and to others as well.

And if she is ill, and according to Dr. Liskka when I spoke to him she was quite depressed, it occurred to me that in fairness it might be better if the committee were certain at the time she was questioned that she was physically rehabilitated and had at least the opportunity to confer with counsel and really was in a position to know what she was about and was not feeling at a disadvantage.

Now, obviously, the disclosures that are indicated by her memorandum are really very serious, and the version of events that she gave me is also very serious, and it seems to me that she must feel, whether anyone from ITT or anywhere else has spoken to her since she was hospitalized, she must feel under considerable strain and a great deal of pressure.

And anything the committee might be able to do that would make it possible for her to feel under somewhat less pressure, at least as far as her health and mood is concerned, once she is interviewed finally it seems to me might be a very good contribution toward getting the truth about these matters.

Senator KENNEDY. Very good.

And I think the other name that appeared had been Mr. Reuben Robertson, who as I understand was one of the earliest ones to raise serious allegations and charges, and he was responded to by Mr. McLaren, and I think it would be of some value to gain what information he has.

Are there any others—both of you have followed this closely, and have attended the hearings—are there others who strike you as being able to provide any additional useful information about these charges to the committee?

Mr. ANDERSON. I think that you have mentioned most of the people. There were witnesses who were present when Mr. Hume was first confronting, first confronted Dita Beard. He has named two ITT officials, Goodrich and Horner.

Senator KENNEDY. What could they testify to, other than the initial conversations took place?

Mr. HUME. I do not know that they could testify to anything other than that, Senator Kennedy, and I do not know that their testimony would be necessary unless the document and its authenticity is ultimately challenged and it is said to have been fake and Mrs. Beard should for some reason say that she never told me the document was real. Then their presence would certainly make them important.

Senator KENNEDY. Were they present at the time when she said it was real, or just present at the time when you talked about the memorandum?

Mr. HUME. They were present the first time that I met with her in her office, and that was the time when she said the document was authentic and identified the initial on it as "her own little 'D'."

Senator KENNEDY. When you authenticated the document with her they were present?

Mr. HUME. That is right.

Senator KENNEDY. Goodrich, and what was the other gentleman's name?

Mr. HUME. Jack Horner was his name.

Senator KENNEDY. Do you remember what she said to you about its authenticity?

Mr. HUME. I remember distinctly that she was very, very flustered, and this was more or less what I expected, and she began to make some rambling comment on, "Well, we are really not involved in this, the timing is bad." She kept saying the timing is bad because of the fact of the simultaneity with the convention arrangements being made, and the ongoing negotiations for a settlement, and she protested the timing was bad and made things look bad, and I was not disposed at that time to take what she was saying terribly seriously, because I hoped that I would have a longer opportunity to sit down with her and I really planned to go into this in great detail with her. But, she said at one point—she got up and she said, "Well, let me go and check in my files for any surrounding correspondence that might bear on this," and so she came back a short time later, and she did have one file folder in her hand, but she said there was nothing in it that she could see that would bear on the matter. And then she turned to me and looked at me and said, "Well, all right, what do you want to know about this?"

And the thing that I wanted most to know, and the thing I concentrated on in that interview was finding out just exactly who the various people were who were referred by first names, or initials, or last names only in the document so that I had the cast of characters properly identified.

And after that I discussed with Mr. Goodrich and with Mrs. Beard the nature of the commitment that the company had made, and that was when I began to get my first indication as to the nature of the commitment, and how it was really an attempt to underwrite this, to stand in for a certain amount of money. And they gave me a copy of a press release that the Sheraton Hotel had put out on the subject clarifying the matter somewhat, and I left shortly thereafter.

But, that was just about the substance of the interview. She did ramble around a little bit and make some comments that seemed sort of—well, the result of someone who was flustered, really, and I did not take them very seriously except for the identification of personnel.

Senator KENNEDY. You, Mr. Anderson, I believe in the opening statement mentioned that you understood that the ITT people would try to discredit Mrs. Beard.

Mr. ANDERSON. Yes, that was information that came from our ITT sources. They said that Edward J. Gerrity was handling this strategy session and that it had been agreed that they would have to discredit her.

I made that public before that discrediting process began, before any of the witnesses could cast any aspersions upon her, so the fact that they followed the scenario suggestions that the strategy was being carried out.

Senator KENNEDY. Why do you believe there was an attempt to do that?

Mr. ANDERSON. Well, I think that this can only be my own speculation, Senator.

The CHAIRMAN. Well, now, wait a minute. We do not—

Senator KENNEDY. I am asking him just for an opinion.

The CHAIRMAN. We do not want any speculation. What is it worth?

Senator KENNEDY. Well, he says he has information that—well, do you know why?

Senator COOK. Why don't you ask him who he got it from?

Senator KENNEDY. Why don't you ask him that? You will have the time.

Senator COOK. The best evidence might prevail.

Senator KENNEDY. But, you know from your own ITT sources that this was at least the course of action that was going to be followed by ITT?

Mr. ANDERSON. This was the course of action that was discussed at meetings at New York that Mr. Gerrity generally presided over.

Senator KENNEDY. Did they talk at these meetings about the kind of discrediting that they were going to do?

Mr. ANDERSON. Yes, that there would be an attack on her credibility. First the suggestion that maybe she was irrational, and that she had been difficult, that she had been abrasive, and that she drank too much.

Senator KENNEDY. Did your ITT sources indicate whether ITT would try to discredit the document as well as the substance of the memorandum?

Mr. ANDERSON. Yes. Our sources indicated that there would also be an attempt to discredit the document, and as we said at the beginning, that one of their techniques would be to try to show that the document was not typed on an ITT typewriter in the Washington office. Our sources said that security men had been going over these typewriters in order to provide expert testimony that the typewriters in the office were not used.

Senator KENNEDY. I think I have used my time.

The CHAIRMAN. Nobody has got any questions except you.

Senator COOK. Yes, Senator.

Senator HART. I have one comment.

The CHAIRMAN. Wait a minute.

Senator HART. I have just a comment.

The CHAIRMAN. Go ahead.

Senator KENNEDY. I mean, I could continue—or would like to give—

The CHAIRMAN. About how long?

Senator KENNEDY. I have got just a little while. It should not be too long. Why don't I yield to the other side?

Senator COOK. Well, if the Senator would yield for a question, all of this you got from an ITT source was hearsay, was it not? You do not know, do you—

Mr. ANDERSON. I was not present at the meetings, that is true.

Senator COOK. Was the person that gave you this information present at the meeting? This must have been quite a meeting, to discuss—I do not think you would discuss that out in the hall, or in the men's room, or in the ladies' room, or out around the secretary's desk or the water fountain when you are going to discredit somebody, and check all of the typewriters and see whether everything is in shape and organized. It had to be a pretty high level meeting, did it not?

Mr. ANDERSON. I suppose it did.

Senator COOK. And this person was in this meeting?

Mr. ANDERSON. I am not going to get into that kind of detail. Anything that might in any way isolate and identify the source would have to be information I cannot give the committee.

Senator COOK. Well, how can we find out whether there is a foundation or basis for this information if the position of the witness is going to be that hearsay evidence can be thrown around at will and there is no way in which we can check it?

Mr. ANDERSON. Why don't you call in Gerrity and put him under oath and ask him whether he conducted such meetings?

Senator COOK. You are saying as far as you know that Gerrity was conducting that meeting because that is the individual you have named so, therefore, he must have conducted that meeting; is that correct?

Mr. ANDERSON. Maybe masterminding the strategy would be a better way of putting it. But, there were meetings and discussions, some informal, some less formal than others.

Senator COOK. Well, then, if you can say he was masterminding the strategy, then obviously he was the one that conducted the meetings.

Mr. ANDERSON. I say there were discussions, both informal and, and so I have been told——

Senator COOK. Well, do you know from your own knowledge that Mr. Gerrity was in such a meeting in New York where they decided to discredit Mrs. Beard, where they decided to do all of these things to her, where they decided she had been drinking too much and that she was irrational?

Mr. ANDERSON. Senator, I have already testified that I was not present at the meeting.

Senator COOK. Then you do not know of your own knowledge?

Mr. ANDERSON. Well, I would think that we have demonstrated that we had pretty good sources inside of ITT.

Senator COOK. Then you do not know of your own knowledge?

Mr. ANDERSON. I was not there, no, Senator.

Senator COOK. Well, Mr. Anderson, is it easy to say that either yes or no, you know of your own knowledge that Mr. Gerrity held the meeting in New York and that they decided to discredit Mrs. Beard? Do you know that of your own knowledge?

Mr. ANDERSON. I am persuaded that it is true, but I was not, but I had no personal, that is, I was not present and did not hear this conversation go on.

Senator COOK. Then it could be untrue?

Mr. ANDERSON. I doubt it, but it could be.

Senator COOK. It could be?

Mr. ANDERSON. Well, in all of this, Senator, we have tried to report to the committee what we have been told. We are not even prepared, nor have we said before this hearing or in our column have we said that Dita Beard told us the truth. We have told you what she reported. We have told you the efforts we have made to verify the story she told us, and we have told you that we have been able to check out some of the details. We have tried to give to the committee exactly what role we have played in digging up this information, and we are not prepared to go beyond what we have already said.

Senator COOK. Mr. Hume, in the remarks that were made to you by Mrs. Beard, she repeatedly said to you, as I understand from your testimony, that Mr. Geneen knew nothing of the situation with ITT and Mitchell as far as the Antitrust Division of Justice is concerned. Is that right?

Mr. HUME. Now, I do not think I testified to that effect. What I think I said was, and what I intended to say is that she said that Mr. Geneen knew nothing of her meeting with Mr. Mitchell in Kentucky and what transpired there.

Senator Cook. Well, now, I would like to refer you to your memo that you have in front of you:

She said the agreement was reached, actually, as they went through the buffet line and then sat down to eat. She said that Harold Geneen knew nothing of the fix with Mitchell and that he still does not.

Mr. HUME. That is what I mean.

Senator Cook (reading):

I pressed her repeatedly on this, saying I find it hard to believe but she stuck to it all the way. She said this was the only meeting or conversation she had ever had with JM. She said that their discussion had nothing whatever to do with the convention negotiations and later said that her conversation with Reineke about Mitchell's reaction to the proposed San Diego location came after the Kentucky session.

Mr. HUME. Right. Well, I did not mean to imply in my testimony that Mr. Geneen was **unaware** of what was going on in the antitrust case.

Senator Cook. Well, what did she mean, that Geneen knew nothing about it?

Mr. HUME. Just precisely that, that she had a conversation with the Attorney General at this party in Kentucky, and that she had not told Mr. Geneen about it, and that Mr. Gerrity, whom she shared this information with, had not told him about it, either, and that thereafter he was not aware of what had transpired at the party in Kentucky, according to her.

Senator Cook. I see.

Thank you, Mr. Chairman.

Senator HART. Mr. Chairman, the comment I want to make is not directly relevant to the proceedings that bring us together. But I think it not inappropriate and it may be useful to persuade all of us to think a little harder and try a little harder to make a basic reform that I suppose might have obviated all of the anguish that is involved in this hearing.

You said that Mrs. Beard first commented that the timing was bad, the coincidence of the money to San Diego and the resolution of the antitrust matter?

Mr. HUME. Yes.

Senator HART. The timing is always bad when money is contributed. It makes no difference whether it is to Republicans or to Democrats or to Hottentots, it inescapably weakens public confidence in the functioning of government, as specifically here.

If there was no private money in my campaign, in President Nixon's campaign, in underwriting conventions at San Diego and Miami, if just public money was involved, this would require supporting what I know people are not yet prepared to accept, the public financing of the political aspects of our Government. But until we get rid of that private money, doubt is cast, second guesses are invited, loss of confidence is inescapable.

Now, none of us believe, we all like to think that no contribution made affects us personally, I like to think that I have never been influenced by a campaign contribution in any action I have ever

taken. The truth is that we do not even understand our own motives. We can just hope that we were not influenced. But the public, inevitably, wonders, and dramatically so in this case.

I raise this point only to suggest that the developing effort here in Congress to prohibit private money in political campaigns should have a very persuasive example in its support from this experience. If it were not for San Diego, the only debate would be a lawyer-economist argument over the prudence of the settlement, and you can get all sorts of versions.

I say, Mr. Chairman, this is not very much in point, except it is in point about everything that goes on all of the time. We have made some reform, we have limited the amount that we are permitted to spend, and we are required to more fully disclose the sources from which it came, and the use to which it was put. But I have been told that that is like treating an alcoholic by requiring him to use a smaller shot glass and record the intake. At the root here is the inescapable doubt, the weakening of confidence that comes from my receiving private money, and I wish very much it was outlawed, and I hope very much the taxpayers could be persuaded that it would be one of the best investments of their money that they ever made. It would be their money instead of my friend's money.

Senator HRUSKA. Would the Senator yield?

Mr. ANDERSON. If I may respond to that, I would like to say that I believe, Senator, that that is a far more paramount issue, a far more important issue, than whether or not Richard Kleindienst is confirmed.

Senator HRUSKA. Would you yield?

Senator HART. Surely.

Senator HRUSKA. There is much to what the Senator from Michigan says, and private money, of course, is always subject to that criticism. I think you are right, all of us think we are free and clear of any obligation to those who subscribe to our campaign funds. I do not know that that is always true, whether it is conscious or subconscious, but it is private money, not only from persons, but from corporations, as well. It would very likely apply to a case where a big corporation, the ATT, furnished a lot of services to one of the major parties, and the bill is not yet paid. It is over \$1 million, but they have entered into a new contract with them now to furnish additional services come next July when they have their convention in Miami.

Senator BAYH. Would the Senator yield?

Mr. HRUSKA. Of course, we get into section 610 there because there is a corporation, there is this money flowing out, and that is part of the evil that is involved, is it not?

Senator HART. It is the doubt that attaches whenever—and to whomever—money is from private sources whose motives may be as pure as mine. It is the suspicion that attaches to the functioning of this system as a consequence of our financing ourselves, in part, out of somebody else's money and if somebody else occasionally turns up with an apparent conflict, which we have to resolve, then do we resolve it as a consequence of private money or do we not. And the tragedy is that most people in this country are convinced we resolve it wrong, and my taking an oath that I did not is not going to change their attitude, and that is where the weakness comes from.

The CHAIRMAN. Gentlemen, Senator Scott is recognized.

Now, I judge we have run out of questions.

Senator COOK. I have one question to ask, Mr. Chairman.

Mr. SCOTT. I defer to Senator Cook for the question and then ask I be recognized.

The CHAIRMAN. Yes. I want to announce that this committee will reconvene at 10:30 Tuesday morning, and the witnesses scheduled are John Mitchell and Mr. Geneen.

Senator HRUSKA. These witnesses are excused?

The CHAIRMAN. Well, no. They have questions.

Senator HRUSKA. They have questions?

The CHAIRMAN. Yes. After the questions today the two witnesses are excused.

Senator GURNEY. I have a question later.

Senator MATHIAS. I have.

Senator COOK. Mr. Anderson, in your column of March 1, is the following paragraph:

Last July, however, the case was abruptly settled. The terms, considered highly favorable to ITT, were announced at the same time ITT secretly pledged up to \$400,000 to support the Republican Convention in San Diego this year. A check for \$100,000 has already been written.

Now, is not the inference in that paragraph, and no other inference, that a check for \$100,000 has been written either to the Republican Party or the Republican National Convention?

Mr. ANDERSON. Well, we have a number of times clarified it and said that the check was written to the Convention Bureau.

Senator COOK. Well, I do not deny that. I am asking you what the inference is in the article that appeared.

Mr. ANDERSON. You can take whatever inference you wish, but we intended to, we intended to imply only that the \$100,000 was put up to help subsidize the Republican Convention.

Senator COOK. Then your answer is that that was the only thing that you intended to imply? You did not intend for everybody throughout the United States that read this, that \$100,000 or \$400,000 had been written to the Republican National Committee or the Republican National Convention?

Mr. ANDERSON. Absolutely not. We intended to imply only that the \$100,000 had gone to help subsidize the Republican Convention.

Senator COOK. And you do admit that the check for \$100,000 was made to the San Diego Convention and Visitors Bureau?

Mr. ANDERSON. Not only admit, but we have testified to that effect long before now.

Senator COOK. And that bureau does not belong to the Republican Party or the Republican Convention?

Mr. ANDERSON. I understand that they are first cousins.

Senator COOK. Well, that is a nice, bright answer, Mr. Anderson, but the real answer is, I suppose, that the San Diego Convention and Visitors Bureau has been in existence, independently, for quite some time. And I have a notion that the only thing that that convention bureau is out after is not just the Republican National Convention, but as many people as they can get into San Diego for the benefit of the community. As a matter of fact, for the benefit of the people that might visit San Diego, wouldn't you think?

Mr. ANDERSON. Well, Senator Cook, the discussions were held with the Republican House Congressional Chairman, Mr. Wilson, were held with Republicans, the original discussion back there in May, May 12, which involved more than just the convention bureau.

Senator Cook. Mr. Anderson, I might suggest to you that if the Visitors Bureau in San Diego wanted the Republican Convention, that it would not go and talk to Democrats about it.

Senator Scott. Mr. Chairman, could I just make a comment?

The appearance of philosophy here intrigues me so much that I ought to say that I am the person who revealed the indebtedness of both political parties and the amounts that are owed to various publicly related organizations, including the ATT, that I think this campaign committee bill will do some good and I hope a great deal.

I want to cut through all of the hypocrisy of testing whether or not moneys were advanced by hotels or civil groups to either Miami or San Diego. I think this committee ought to have in the record a report of what amounts were made available to the arrangements committee of the cities of Miami and San Diego by both the Democratic and Republican Parties. I think it is a desirable thing.

We perfectly well know up here that large sums of moneys are raised to cover the costs of national conventions. I served on the arrangements committee of the 1956 convention in San Francisco, and I think we ought to have it in the record to avoid this thorough hypocrisy of pretending to be shocked at the fact that cities are anxious to raise money to lure conventions.

Moreover, since we are in the disclosure field, and reference has been made by at least one Senator to the millions of dollars being raised behind the President's campaign, I think it might be useful to recall and to have in the record the millions of dollars and the millions of millionaires behind the campaigns of Senator Muskie, Senator McGovern, and all of the other candidates to the degree to which they are viable, and I think those Senators whose campaigns have been supported by millionaires and are parts of this committee ought to be perfectly willing to make these disclosures.

I have made disclosures in my last campaign of every person who made a contribution to me, and I was supported at one time or another by 33 labor unions. I have made that clear and I think the labor unions ought to be included. But I think if we are going to talk about disclosure, let us let everybody on this committee tell what they got and from whom, and we would cut this hypocrisy out.

Mr. ANDERSON. If I may respond, I certainly do endorse that, Senator Scott, and I would just add this, that there should also go along with it, along with the disclosure, an endorsement of the Corrupt Practices Act.

Senator Scott. I agree. I agree entirely with you.

Senator Mathias. Mr. Chairman, it is obvious that we are going to have to have some word from Mrs. Beard before this proceeding is terminated. It is not nearly as obvious when that word from Mrs. Beard will be available, at least by way of personal testimony, and I would like to suggest that the committee consider propounding written interrogatories to Mrs. Beard and she could then answer under oath, under circumstances which would not involve a physical strain on her at this time.

In the recess between now and Tuesday, the members might consider the questions which they individually would propound or suggest be propounded by the committee.

The Chairman. Now, we will take that under advisement. I think Mrs. Beard should be called when she is physically able to be

cross examined. We could not do it now because her doctor and lawyer, with the president of the medical society out there, are conferring, and I would like to know what conclusion they reach.

Senator GURNEY. Mr. Chairman?

The CHAIRMAN. Now, of course, let me reiterate that there is always the right to recall any witness.

Senator GURNEY. I had not intended to ask any further questions, but I think I ought to ask this one:

In my questioning yesterday I asked general questions of both you and Mr. Hume, whether either of you had ever used any electronic devices for surveilling, and as I recall, your reply was, no, you never have; is that correct?

Mr. ANDERSON. That was my answer, yes. I think Mr. Hume said he had used some, but not recently.

Senator GURNEY. Correct. There has been brought to my attention since then a newspaper article here, one in the New York Times of January 5, 1972. This is an article about you and your column, and in it it refers to the Sherman Adams, Bernard Goldfine case in the Eisenhower administration and it says here he, being you, "always laughs at stories that he runs a back alley shop. Such talk stems in part from his being caught with a congressional investigator who was bugging a hotel room in connection with the Sherman Adams-Bernard Goldfine case in the Eisenhower administration."

Then there is also another article that has been brought to my attention here out of the New York Times of July 8, 1958, and it says, among other things:

"Shortly after midnight Goldfine's staff members in the suite at the Sheraton Carlton Hotel caught Mr. Shacklette," and I guess he was with the subcommittee, "and Jack Anderson, an employee of Drew Pearson, newspaper columnist, eavesdropping from an adjacent room with a microphone and tape recording apparatus."

I just wanted to be able to call that to your attention and give you a chance to explain it, in view of your other answer.

Mr. ANDERSON. As a reporter I did, I broke the story of the Sherman Adams, Bernard Goldfine scandal, and because of that the committee that was investigating it came to me for information. I gave them information, cooperated with them. And it is quite true that the committee was eavesdropping on Sherman Adams, and that I did call upon the investigator in his hotel room at the time when he was conducting electronic eavesdropping.

I did not have anything to do with operating the machine. I do not know how to operate it. But, if J. Edgar Hoover will invite me to one of his buggings, as a reporter I will be happy to attend.

Senator GURNEY. Did you work with Mr. Shacklette on this occasion with the bugging?

Mr. ANDERSON. We exchanged information. I gave him information that helped him with his investigation, and in return he gave me information.

Senator GURNEY. You were there present with him?

Mr. ANDERSON. I was present with him for, yes, for just 2 or 3 hours, yes.

Senator GURNEY. Did you go to the room with him?

Mr. ANDERSON. Not to the best of my recollection. He preceded me to the room by a week or two.

Senator GURNEY. Did you know that he was engaged in this electronic surveillance?

Mr. ANDERSON. Yes, I did. I did.

Senator GURNEY. And did you use any of the information obtained from the electronic surveillance?

Mr. ANDERSON. To the best of my recollection, no, not in the column. There was a subsequent trial of Bernard Goldfine, and as I recall it, his attorney, Edward Bennett Williams, did ask me what I heard, and I did report that I had heard Goldfine and his wife quarreling over another woman.

Senator GURNEY. Did you use any information that you obtained in this manner, in your story?

Mr. ANDERSON. I am—I am quite certain that I never did.

Senator GURNEY. Did you write—and I am really not familiar with these things and I just want to get the record straight—did you write in the Drew Pearson column stories about the Sherman Adams-Goldfine affair?

Mr. ANDERSON. Yes. It was my story in the Drew Pearson column that led to the investigation of the Sherman Adams and Bernard Goldfine case.

Senator GURNEY. But, it is your testimony that none of the material appeared in these stories that was obtained from this wiretapping or this electronic surveillance?

Mr. ANDERSON. That is my testimony. That is my testimony.

Senator GURNEY. Thank you.

Senator KENNEDY. Mr. Anderson, that case having been brought up, did not Mr. Sherman Adams appear before a congressional hearing to respond to those investigations of the congressional committee?

Mr. ANDERSON. Yes, he did. He came forward and gave full testimony.

Senator KENNEDY. At that time he was at the White House, was he?

Mr. ANDERSON. At that time he held the highest position in the White House, next to the President.

Senator KENNEDY. Do you know why he came down?

Mr. ANDERSON. Because there was an aroma of scandal, and the President insisted that he go down and clear it up.

Senator KENNEDY. Thank you, Mr. Anderson.

Senator HART. If there are no further questions, we will recess to resume at 10:30 on Tuesday of next week.

(Thereupon, at 3 p.m. the hearing was recessed, to reconvene on Tuesday, March 14, 1972, at 10:30 a.m.)

RICHARD G. KLEINDIENST

TUESDAY, MARCH 14, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 11:20 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Tunney, Hruska, Fong, Scott, Thurmond, Cook, and Mathias.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. Will you stand up, please, sir.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. MITCHELL. I do, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, identify yourself for the record.

TESTIMONY OF JOHN N. MITCHELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES

Mr. MITCHELL. Mr. Chairman, my name is John N. Mitchell, former Attorney General of the United States having resigned that office——

The CHAIRMAN. Wait just a minute. Let them clear out.

Now proceed, sir.

Mr. MITCHELL. Having resigned that office on March 1, 1972.

Would you require further identification?

The CHAIRMAN. No, sir.

Mr. MITCHELL. Mr. Chairman, I have a short statement that I would like to read.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you. I would like to address myself to the three points which relate to my relationship—or rather my non-relationship—to the subject matter of this hearing.

The first pertains to the litigation initiated by the Antitrust Division against ITT. When the first of three such matters reached the stage for consideration by the Attorney General in April 1969, in accordance with departmental practice, I disqualified myself on the grounds that my former law firm had done legal work for one of ITT's subsidiaries.

After that date, all matters pertaining to the ITT litigation rested in the hands of the Deputy Attorney General and the Assistant

Attorney General in charge of the Antitrust Division. I was not informed of the progress of the litigation or negotiations between the Department and ITT.

The second point has to do with my contacts with representatives of ITT.

At no time have I talked to any representative of ITT or any of its subsidiaries concerning the litigation or the settlement negotiations.

Based on the records of my office as Attorney General and on my own recollection, I have had contact with three representatives of ITT. I present them in chronological order.

First contact was with Mr. Harold Geneen, president of ITT. The first time I met Mr. Geneen was the evening of May 27, 1970 at a dinner in the White House attended by 45 business leaders. The contact with Mr. Geneen that evening was purely social, and I had no substantive discussions of any kind.

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 35 minutes. It might have been shorter. The meeting was held at Mr. Geneen's request to discuss the overall antitrust policy of the Department with respect to conglomerates. I assented to the meeting on the express condition that the pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

At the meeting Mr. Geneen contended that the Department's antitrust policy with respect to conglomerates was to bring suits solely on the bigness theory. I told him this was not the Department's policy and advised him that our policy was to bring litigation only where there was a showing of anticompetitive practices.

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Next, Mr. Felix Rohatyn. I met Mr. Rohatyn on four occasions, two of them on April 29, 1971, one on September 3, 1971 and one on November 29, 1971.

None of these had anything to do with ITT, and the Department's litigation against ITT was never mentioned or discussed.

My participation in these meetings was as a member of an ad hoc government committee formed in 1970 to deal with the financial problems that various brokerage houses were having at that time. Mr. Rohatyn, a partner of the New York firm of Lazard Freres, participated as chairman of the surveillance committee of the New York Stock Exchange. Among other things, that ad hoc committee worked on the SIPEC legislation during the summer of 1970.

I would like particularly to call the committee's attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the du Pont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:40 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Myerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr. Rohatyn

left the meeting before its conclusion. The second meeting convened at 1:30 p.m. Present, in addition to myself, were Mr. Lasker, chairman of the New York Stock Exchange, Mr. DeNunzio, vice chairman of the New York Stock Exchange, Mr. Haack, president of the New York Stock Exchange, and a Mr. Brandow who, I believe, was their counsel. Mr. Rohatyn joined the meeting at 1:40; Mr. Perot, Mr. Myerson, and Mr. Martin, who I believe, was Mr. Perot's counsel, joined at 2:10, and Mr. Flanagan at 2:30. My records show that my next appointment that day was with an official of the Department at 3:04. It is my recollection that all participants in the second meeting left my office together.

Mrs. Dita Beard. My one encounter with Mrs. Beard was on May 1, 1971, at the executive mansion of Governor Nunn during a reception and buffet supper.

As I recall this incident, Mrs. Beard approached me to complain about the treatment that ITT was receiving at the hands of the Justice Department. I advised Mrs. Beard that I had disqualified myself with respect to this litigation and could not and would not discuss it with her. I suggested that the proper course would be for the appropriate people representing ITT to take the matter up with the appropriate people in the Justice Department. A few minutes later, Mrs. Beard agains approached me on the subject matter, I believe twice, and I repeated my desire not to discuss the subject matter and advised her that I did not appreciate her pressing the subject.

The third point, Mr. Chairman, related to the selection of San Diego as the site of the Republican 1972 Convention. I was not involved in any way in any negotiations which led to the selection of San Diego as the site of the convention by the Republican National Committee.

I have never talked to any representative of ITT about the San Diego site or any matter relating thereto.

I have never talked to the Deputy Attorney General or the Assistant Attorney General in charge of the Antitrust Division about the San Diego convention site or anything relating to any discussions or negotiations with ITT or any of its subsidiaries.

I do not recall when or how I first learned of the Sheraton Hotel Corp.'s participation and support for the holding of the convention in San Diego, but I believe that I first read about it in the newspapers.

I do not as of this date know what arrangements, if any, exist between ITT or the Sheraton Hotel Corp. and the Republican National Committee, or between ITT or any of its subsidiaries and the city of San Diego or any agency thereof.

Mr. Chairman, I trust that these facts will clarify this record here. I trust that they make it unnecessary for me to deny the statements contained in the memorandum dated June 25, 1971, attributed to Mrs. Beard. At the risk of redundancy, however, I welcome this opportunity to state under oath that the statements in that memorandum which relate to me are totally false and totally without foundation.

In closing, Mr. Chairman, I would emphasize the fact that there is pending before the Senate, the President's nomination of Richard G. Kleindienst to be the Attorney General of the United States.

As one who has worked closely with Mr. Kleindienst on a daily basis for the past 3 years, I am happy to have this opportunity to

state my opinion that he is preeminently qualified for the position which the President has nominated him. I base my opinion not only on his professional qualifications, which are of the highest order, but on his character, his integrity and his dedication to his office and to the public interest.

Mr. Chairman, that terminates my prepared statement and I am available to the committee.

The CHAIRMAN. Mr. Mitchell, in the incident in the Governor's mansion in Kentucky, was that the first time you had ever met Mrs. Beard?

Mr. MITCHELL. Yes, sir; it was.

The CHAIRMAN. What they are asking us to believe is that a total stranger—did she introduce herself to you or how did you meet?

Mr. MITCHELL. I am not quite certain, Mr. Chairman. The mansion, the lower floor of it, had, I would say, somewhere between 40 and 50 people in it. My wife and I were in a reception room off the main hall, and I believe Governor Nunn was there, and Mrs. Beard was in the room. And I don't recall whether anybody introduced me to her or not, but the first contact I had with her was at that time when she approached and opened up on the subject matter of the ITT litigation.

The CHAIRMAN. It is the case of a total stranger meeting the Attorney General of the United States for the first time and discussing a thing of this magnitude with him, is that correct?

Mr. MITCHELL. Well, that was the circumstance. It was the first time, to my knowledge, that I had ever met the lady, and I don't think it was a question of discussing it. It was a question of her bringing it up and my trying to terminate the conversation.

The CHAIRMAN. Yes. Was she drinking?

Mr. MITCHELL. Well, I would believe that most everybody there was but I don't want to characterize her particular condition.

The CHAIRMAN. Did Mr. Kleindienst ever discuss this matter with you?

Mr. MITCHELL. Mr. Kleindienst has never discussed with me the ITT litigation or the negotiations relating thereto or anything relating to the San Diego convention and ITT or Sheraton Hotels or the Republican Party or anything else.

The CHAIRMAN. And you have discussed the arrangements for the convention with no one?

Mr. MITCHELL. I have not discussed the arrangements for the convention insofar as they pertain to the Sheraton Hotel Corp. or ITT with anybody until after the stories were long since in the newspapers.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. What did the officials of ITT who visited you talk to you about?

Mr. MITCHELL. Senator, there was, if you are talking about the visit of Mr. Geneen in August of 1970, as I testified to, and as I understand, he was making his thoughts known throughout the Government and in Congress concerning his opposition to what he thought was the antitrust policies of the Department. It was his contention, as I vividly recall, that the Antitrust Division of the Department was bringing lawsuits based on the concept of bigness as distinguished from the anticompetitive factors required by the statute.

Senator ERVIN. Was there any specific reference to the lawsuit against the ITT or any of its subsidiaries?

Mr. MITCHELL. No, sir. The condition of the meeting was to the effect that that matter would not be discussed, and it was not discussed.

Senator ERVIN. And what was the conversation, what did the other members, I mean the other officers, of ITT, I believe you said there were two others that you have talked to.

Mr. MITCHELL. The other two that I had talked to, one was Mr. Rohatyn whose participation in the question of the stock exchange and the problems of the brokerage firms on the street, and the other one was Mrs. Beard. Those are the other two that I had reference to.

Senator ERVIN. Now did either—well, you have told us what Mrs. Beard attempted to talk about, what did the other officials do, did they say anything about the ITT or anything about either one of the antitrust suits against it or its subordinates?

Mr. MITCHELL. No, neither Mr. Geneen or Mr. Rohatyn discussed at all the ITT litigation or negotiations. Of course, the conversation I had with Mr. Geneen was back in the summer of 1970, and it was just then pending litigation. As I understand it, there were no negotiations going on at that time, and Mr. Rohatyn's conversations with me related entirely to the financial problems of the brokerage houses in New York City. He, of course, as I stated, was in the capacity as chairman of the Surveillance Committee of the New York Stock Exchange which was very heavily involved in that subject matter.

Senator ERVIN. Now, I understand from your testimony that you totally disqualified yourself from participation in any matter relating to the antitrust suits against either the ITT or any of its subsidiaries and that you did not communicate to any of your subordinates in the Department of Justice anything about the conversation you had with either of these three officials?

Mr. MITCHELL. That is absolutely correct, Senator. I did not communicate with anybody in the Department about either of the conversations that I had with Mr. Geneen or Mr. Rohatyn. There was no reason to do so in the latter part and I didn't in the former.

Senator ERVIN. Thank you.

The CHAIRMAN. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I will defer for the time being to my colleague, Senator Fong.

Senator FONG. Attorney General Mitchell, when you met with Mr. Geneen, one meeting was at the White House and the other meeting at your office, is that correct?

Mr. MITCHELL. That is correct, sir.

Senator FONG. At the second meeting, the only question that came up was as to what was your policy relative to antitrust cases?

Mr. MITCHELL. That is correct, Senator.

Senator FONG. Nothing was discussed involving the ITT matter?

Mr. MITCHELL. Nothing whatsoever, the meeting was held under the condition that the subject matter would not be discussed.

Senator FONG. Then when you met with Mr. Rohatyn on four occasions all of those meetings were at the office?

Mr. MITCHELL. They were all at my office, yes, sir.

Senator FONG. And all during the four meetings only the stock exchange problems were discussed?

Mr. MITCHELL. Yes, sir; more particularly during that period of time the financial interest of Mr. Ross Perot in the Du Pont firm

that was having financial problems, and their relationship with the New York Stock Exchange and, of course, the Securities and Exchange Commission.

Senator FONG. I see.

And your meeting with Mrs. Dita Beard, the first meeting was—how many meetings have you had with Mrs. Beard?

Mr. MITCHELL. Just one, Senator.

Senator FONG. At the Governor's mansion?

Mr. MITCHELL. At the Governor's mansion.

Senator FONG. In Kentucky?

Mr. MITCHELL. On May 1, 1971.

Senator FONG. That was the only time you saw her?

Mr. MITCHELL. To the best of my recollection, that was the case.

Senator FONG. Did you know who she was?

Mr. MITCHELL. I had heard the name of Mrs. Beard and knew she was a lobbyist in Washington. I am not quite certain as to where or when I might have heard the reference to her.

Senator FONG. Could you tell us how long you talked to her during the first encounter that evening?

Mr. MITCHELL. Well, it is my recollection, and I might describe the total picture—as I stated, in response to the Chairman's question, in this drawing room there was this encounter where she came up to complain about the activities of the Department against ITT and, as I testified, I told her that I was disqualified and wouldn't and couldn't talk with her about the subject matter, and referred ITT people to the Department. That terminated the conversation momentarily.

Senator FONG. How long would you say that lasted?

Mr. MITCHELL. Well, I would say 2 minutes at the most, 3 possibly. I don't specifically recall Governor Nunn, and Mrs. Nunn who was there, suggested maybe it would be well if we went through the buffet line to dinner, which we did.

As I recall, Mrs. Beard again approached me at the buffet line with the same harangue about the same subject matter. We went on through the line, went to the dinner table and sat down, and while we were eating our dinner it is my recollection Mrs. Beard approached us again and that is when I told her in rather harsh terms I didn't appreciate her pressing me on the subject matter that particular time or any other time.

Senator FONG. Now, how long did she talk to you while you were standing on the buffet line?

Mr. MITCHELL. Standing in the buffet line?

Senator FONG. Yes.

Mr. MITCHELL. I think you might characterize it that she talked at me and it was for a very limited period of time while we were going through the line. I wouldn't say more than a couple of minutes at the most.

Senator FONG. I see.

Then when you sat down she came to see you again?

Mr. MITCHELL. She came back over to the table, yes, sir.

Senator FONG. How long did that conversation last?

Mr. MITCHELL. Well, I would say again it would be a matter of relatively few minutes, maybe 1, 2 or 3. I don't recall, Senator.

Senator FONG. She said you gave her a dressing down the like of which she had never received before. Could you tell us what that dressing down was?

Mr. MITCHELL. No, I don't think that is a proper characterization. As a matter of fact, when she first approached me on the subject matter, as I recall, I was very gentlemanly about explaining to her of the situation of my disqualification and, as I recall, it wasn't until the third time when she approached me at the table that I said in no uncertain terms that I didn't appreciate her pressing me on the subject matter and said, in effect, "Shove off."

Senator FONG. Did she then stop pestering you?

Mr. MITCHELL. That was the last encounter that I had with her that evening.

Senator FONG. I see. You don't know anything about a \$400,000 contribution?

Mr. MITCHELL. No, sir. As I testified I still don't know as of today what the arrangements might be other than the pros and cons I read in the newspaper; what the amount of the contribution might be or what its conditions are; or between what part of the ITT complex it related to or who in San Diego or what it is related to. I have not been involved in it.

Senator FONG. In other words, once it was determined that because of previous connections you should not be involved in the matter, you just completely kept yourself away from the case?

Mr. MITCHELL. Yes, sir; and that was back in April of 1969. We have a practice or had a practice in the Department where all of the top lawyers are required to file with the Department any instances which might bring about a conflict of interest. In this particular case, as a lawyer, that related to the clients, past clients, of the firm that I had been associated with, and one of those clients apparently had been a subsidiary of ITT.

Senator FONG. And that is a standing policy in the Department?

Mr. MITCHELL. It is a standing policy, sir, which has been, of course, brought into play at other times.

Senator FONG. Yes.

Thank you.

The CHAIRMAN. Now, when Mr. Geneen called on you to discuss antitrust policy he was calling on a number of individuals in the government, is that correct?

Mr. MITCHELL. Yes, sir. I understood it to be so at the time, but I really didn't know the number of them or who they were until I read this morning's newspaper.

The CHAIRMAN. And that is in the Congress, too.

Mr. MITCHELL. The paper so reports, Mr. Chairman. I presume it is an accurate statement.

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Mitchell, as you know, I assume, Governor Nunn testified before the committee last week.

Mr. MITCHELL. Yes, sir; I understand he did.

Senator HART. And let me read a portion of his testimony. He has been asked what it was that he heard exchanged between you and Mrs. Beard, and on page 457 [of the typewritten record] I am asking him:

If you can, to tell us exactly what was said rather than characterize it, and he said:

Well, let me say this, that I have no memory of any words being uttered to Mrs. Beard by the Attorney General other than that he did not in substance

want to talk about it. First he said he removed himself from it. The second thing he said was that it was not a time or place to talk about things like that or to talk about this or anything else. The third thing that I recall him saying was that he didn't want to hear anymore about it. He didn't like the approach that she was making or the pressures that had been brought or something of this nature. And he was right vehement in his last expressions.

Would you tell us what these other pressures were to which Governor Nunn said you referred?

Mr. MITCHELL. Senator, I don't feel that there were any other pressures. I think what he might have had in mind was the last encounter that we had at the table where I said that I would appreciate if she would stop pressing me on the subject matter, which she had been doing on the two prior occasions. That was at the time when you might say, that I lost my sweet disposition and told her in no uncertain terms that I didn't want to have her approach me any further.

Senator HART. I then asked him:

Did he say anything with respect to what kind of pressures had been brought? Governor NUNN. No, sir.

Senator HART. Just that pressures had been brought?

Governor NUNN. That is all that he—he said something about the pressures being brought.

Well, specifically, except for the conversation then being engaged in with Mrs. Beard, had any pressures been brought on you with respect to the ITT settlement?

Mr. MITCHELL. No, sir. As I stated earlier, I had disqualified myself from the case, had no conversations about the subject matter.

Senator HART. When you say that you had a visit from Mr. Geneen, but you made clear that it would not, the ITT litigation would not, be a proper subject for the discussion, you tell us that Mr. Geneen discussed the Department's antitrust policy with respect to conglomerates. That was at a time when the Department had filed suit against ITT?

Mr. MITCHELL. To the best of my knowledge they had because it was in August of 1970.

Senator HART. You regarded Mr. Geneen as speaking for whom, the American business community and not ITT?

Mr. MITCHELL. I think Mr. Geneen was speaking for both, both ITT and the American business community, because I had read in the newspaper of many statements that he had made on the subject matter. As a matter of fact, I think I recall that he and Mr. McLaren had a debate some place on the subject matter and had made his positions quite widely known through the press as to his opposition on the antitrust policy of our division.

Senator HART. Do your records, if you know, show any meeting you may have had with the Lieutenant Governor of California in the spring of 1971, April or May?

Mr. MITCHELL. Yes, sir; I have the records, I have office records which are kept in three forms. No. 1 is the appointment book which is made up in advance. No. 2 is a log that is kept of all visitors during the course of the day and, No. 3, is a separate card index that relates to visits at my office. I have here the records pertaining to—this is the card index, pertaining to—Lieutenant Governor Reinecke and a Mr. Gillenwaters, and these records show that both of these gentlemen visited me twice, once on the 26th of April in 1971, and the other on the 17th of September in 1971. I know there have been discussions in the

newspapers to the effect that the Lieutenant Governor and Mr. Gillenwaters visited me in May of 1971. We have searched our records, all three of the types of records we have kept, and there is no such record of either of those gentlemen having visited me during the month of May.

Senator HART. Did you have any discussion in April, for example?

Mr. MITCHELL. Discussion with the Governor?

Senator HART. Yes; or——

Mr. MITCHELL. The Lieutenant Governor; yes, sir, I did. I had— Lieutenant Governor Reinecke was, from what his representations to me were, appointed by the Governor of California to assist in the so-called economic development of the State, and Governor Reinecke on these occasions when he has talked to me has advanced on behalf of the State of California projects like the space shuttle and aircraft production and matters like that, and I don't doubt for a moment that during one of those conversations he might have talked about the possibility of locating the Republican Convention in the State of California.

Senator HART. In April he might have or he did?

Mr. MITCHELL. I don't recall, sir. He might have. He might have.

Senator HART. I would yield the balance of my time, if any, to Senator Kennedy or to Senator Scott.

Senator SCOTT. I would be very brief.

Mr. Mitchell, over how many years have you had an association, official and personal, with the Acting Attorney General, Mr. Kleindienst?

Mr. MITCHELL. I believe, sir, that I first met Mr. Kleindienst in 1967 and saw quite a bit of him through that year, in 1968 and, of course, he was my deputy in the Department of Justice from January of 1969 until my resignation here in March of this year.

Senator SCOTT. Mr. Mitchell, neither he nor any witness, so far as I recall, even through hearsay, has made any charge that Mr. Kleindienst has any knowledge whatsoever of the ITT-city of San Diego negotiations. You have known him well for 5 years, and I ask you what is his reputation for veracity and truth telling?

Mr. MITCHELL. Absolute and complete, Senator, and, if I might say so and take just a moment of this hearing, I think it is a scurrilous fact that three outstanding people like the Deputy Attorney General and Judge McLaren and Dean Griswold have been put to the point where their integrity, their honesty, and their ability has been impugned in these hearings and I, for one, of course, having brought those gentlemen into the Department or kept them there and worked with them through these years, feel very strongly about the fact that they have absolutely been maligned without cause, rhyme, or reason.

Senator SCOTT. Mr. Mitchell, I agree with you. I have been in adversary positions with Mr. Kleindienst as well as in social and political and legal association with him. I agree with you entirely. I hope that what you have said here will be fully reported. I hope it will be brought out that with all of the smoke screen raised and all of the attempts to derogate witnesses to impugn their character and their reputation, that it will also appear that no charge made against Mr. Kleindienst with regard to any alleged connection between the ITT or the ITT case and the San Diego convention or the city of San Diego's Bureau of Arrangements and Conventions, has been established at any

point in the proceeding, and at some point we may be able to get back in this hearing to the question of Mr. Kleindienst.

Thank you.

Senator KENNEDY. Thank you very much, Mr. Chairman. Mr. Mitchell.

Mr. MITCHELL. Senator.

Senator KENNEDY. Senator Hart asked, I think, whether you knew that the cases were proceeding against ITT at the time that you had your conversation, 35-minute conversation, with Mr. Geneen. I think you indicated that you did have some understanding that the cases were——

Mr. MITCHELL. Yes, of course; I had obviously read about them in the newspaper and had considerable interest in their progress.

Senator KENNEDY. So you were aware there were some cases being—and that your Antitrust Division was pursuing this?

Mr. MITCHELL. Oh, yes, Senator. As I am sure you are well aware the bringing of those cases by the Antitrust Division received wide publicity in the newspapers.

Senator KENNEDY. Mr. McLaren even made a number of speeches about his belief in the importance of those cases, did he not?

Mr. MITCHELL. I presume he did. I don't read Mr. McLaren's speeches. I didn't read them, but I know I read of one time that he and Mr. Geneen had quite a debate on the subject matter of the nature of the antitrust policy at some forum some place.

Senator KENNEDY. Was Mr. Geneen a friend of Mr. McLaren's?

Mr. MITCHELL. A friend?

Senator KENNEDY. Yes.

Mr. MITCHELL. I haven't the faintest idea what, if any, their relationship was.

Senator KENNEDY. That was the only contact that you were aware of between Mr. Geneen and Mr. McLaren, the debate that you referred to?

Mr. MITCHELL. That is the only thing that I would know about having read in the press, I don't know whether Mr. Geneen has met Mr. McLaren on other occasions or what their relationship might be.

Senator KENNEDY. It would certainly appear to be understandable, wouldn't it, if Mr. Geneen talked with Mr. McLaren, who was the head of the Antitrust Division, if he had a case, would it not?

Mr. MITCHELL. Senator, we ran that Department on the point where anybody who had a legitimate reason to come in and talk about any subject matter they were invited.

Senator KENNEDY. Now, you made some speeches while you were Attorney General. Did you talk about your antitrust policy in general terms?

Mr. MITCHELL. To the best of my recollection I made one speech before one of the southern bar associations, I think it was the Georgia Bar Association, back in, I would guess it would be, 1969. Don't hold me to it. It was early in the administration.

Senator KENNEDY. Mr. Kleindienst made speeches, is that the only speech you made talking about——

Mr. MITCHELL. About the antitrust policy?

Senator KENNEDY. I was just thinking generally as Attorney General, speeches that you might be called upon as the Attorney General talking about the policy of the Justice Department in perhaps a wide variety of different subjects of which one was antitrust policy.

Mr. MITCHELL. Well, I think that was the sole speech where the sole subject matter was antitrust. I have made other speeches, I am sure, about the functions and operations of the Department, in which the antitrust policies were mentioned.

Senator KENNEDY. What was the thrust of that speech?

Mr. MITCHELL. The speech in the Georgia Bar?

Senator KENNEDY. Yes.

Mr. MITCHELL. Well, it dealt primarily with the now established policies of the Department where we were extending some of the prior doctrines to the point where if bigness, and I want to make this very clear, if the product had anticompetitive factors, that our policy would apply to it. That is the thrust of that speech.

Senator KENNEDY. And Mr. McLaren was a vigorous spokesman and a believer in that viewpoint, was he not?

Mr. MITCHELL. Very much so. As a matter of fact, Mr. McLaren and I had quite a number of discussions on the subject matter in question with the formulations of that policy particularly to make sure that we had the appropriate statutory authority under the Kefauver-Celler Act, etc., as to proceed in this direction.

Senator KENNEDY. I imagine Mr. McLaren was under a good deal of—well, I suppose, he was pursuing what might have been considered a controversial antitrust policy in this respect, was he not?

Mr. MITCHELL. Senator, I would say that almost any antitrust policy gets to be controversial unless it is some predatory practice that nobody subscribes to.

Senator KENNEDY. He was, as I understand, sort of an innovator and creator and a true believer in at least this approach on antitrust, was he not?

Mr. MITCHELL. Well, Mr. McLaren, Judge McLaren, as you know, was probably one of the leading antitrust lawyers in this country and had great ability and great expertise and he was particularly interested in seeing that any anticompetitive practice which stifled the competitive aspect of our economy was pursued to the point where it would be eliminated. That was the general approach.

Senator KENNEDY. And you supported that approach?

Mr. MITCHELL. Yes, I most assuredly do.

Senator KENNEDY. Mr. Kleindienst had mentioned, during the course of his appearance here, that he believed very strongly in that approach. I think he volunteered that when any occasion presented itself, he indicated his full and complete support for what Mr. McLaren was attempting to do in the Antitrust Division. I think he even volunteered that he believed you did the same as well at the time you were called upon to speak for the Justice Department.

Mr. MITCHELL. Well, I would believe, Senator, that Mr. Kleindienst would carry out the policy of the department that had been laid down by the Attorney General and the Assistant Attorney General in charge of the Antitrust Division.

Senator KENNEDY. Now, when Mr. Geneen came down to visit you, you had an awareness that the ITT cases were, in effect, in operation or being pursued or were at least in the forefront of the Antitrust Division?

Mr. MITCHELL. I had an awareness that the cases had been filed. The status of them I did not know.

Senator KENNEDY. And when Mr. Geneen came down and was speaking to you about antitrust policy, what sort of argument was it, do you remember, that he was making to you?

Mr. MITCHELL. As I testified, Senator, it is in my prepared statement, the basis of his argument was that the Antitrust Division was bringing these cases on the basis solely of bigness, and that the statutes didn't authorize it, that there wasn't anything wrong with bigness from the economic point of view, and, as I testified in my prepared statement, I told him that that was not the basis upon which the Antitrust Division was proceeding. There had to be anticompetitive factors before the Department's policies applied.

Senator KENNEDY. Was Mr. Geneen persuaded at all by your arguments?

Mr. MITCHELL. I would doubt it very much.

Senator KENNEDY. Did you take any, make any notes on the basis of this meeting?

Mr. MITCHELL. No, sir; none whatsoever.

Senator KENNEDY. Because it was just a general policy discussion?

Mr. MITCHELL. Just a general policy discussion.

Senator KENNEDY. If you accepted Mr. Geneen's arguments, what do you feel would have been the impact on the ITT cases?

Mr. MITCHELL. I don't know, Senator. I don't know enough about the ITT cases to make that judgment.

Senator KENNEDY. Well, certainly he wasn't making these arguments completely out of the blue, was he?

Mr. MITCHELL. Senator, I think he was making them as, almost as, an evangelist with respect to the subject matter.

Senator KENNEDY. Didn't the subject matter affect his own situation?

Mr. MITCHELL. Of course it did. On the other hand, it may have affected further acquisitions by ITT. In other words, both sides of the coin.

Senator KENNEDY. What do you mean, both sides of the coin? You mean the side of the coin that has many——

Mr. MITCHELL. The side of the coin that he was not under restraint and compulsion so far as I know from going ahead with any additional acquisitions at that time.

Senator KENNEDY. What is the other side of the coin?

Mr. MITCHELL. That is it, the other side of the coin was that he was involved in the litigation at that time.

Senator KENNEDY. He was involved in litigation. If there had been a change by the Justice Department of its antitrust policies to accept Mr. Geneen's viewpoint, how do you think that would have affected the antitrust division of your Department?

Mr. MITCHELL. Senator, as I just got through testifying in response to your question, I haven't any idea because I don't know the nature or the merits of those particular cases that were filed.

Senator KENNEDY. Well, so you are suggesting——

Mr. MITCHELL. What I am really saying is that the statutes apply to anticompetitive practices, reciprocity or whatever it may be. They may very well have been involved to the point in the litigation that was then pending in the Department where his argument wouldn't have had any effect upon it.

Senator KENNEDY. Well, do you really believe that to be so?

Mr. MITCHELL. I most assuredly do because of the simple fact I don't know what the nature of that litigation was or what was the basis upon which the Department brought its action.

Senator KENNEDY. Certainly not in a precise way, but didn't you have—just from a casual reading from the newspapers—at least some kind of idea?

Mr. MITCHELL. No; I can't say I would have any kind of idea to formulate an answer to the question you just put to me.

Senator KENNEDY. So I wonder if you had been persuaded by Mr. Geneen's arguments and felt that that was a legitimate approach in terms of the ITT, what would have been your next step? Would you have gone down and talked to—

Mr. MITCHELL. I can't speculate on that. I denied Mr. Geneen's complete approach to it and haven't given any thought to it and don't propose to. The fact of the matter is that Mr. Geneen's complaint about suits on the basis of bigness was completely rebuffed.

Senator KENNEDY. And it is your comment here that even if you had been persuaded by Mr. Geneen's viewpoints or arguments, you can't at this time give us any kind of feeling or understanding about what that impact would have been on your antitrust division?

Mr. MITCHELL. No; I can't speculate upon that at all, because, as I point out, Mr. Geneen was arguing that we were suing on the basis of bigness. I told Mr. Geneen that we were not, that our policy related to anticompetitive factors. So we were talking about an entirely different subject matter.

The CHAIRMAN. Your time is up.

Senator HRUSKA.

Senator HRUSKA. Mr. Mitchell, you have testified in response to questions from Senator Fong that there were three instances or occasions during that buffet supper at the Governor's mansion in Kentucky at which you exchanged some remarks with Mrs. Beard. My recollection is that, and I ask you to verify it or correct it, the first time it couldn't have been more than 2 or 3 minutes, the next time maybe 1 or 2 minutes, and on the occasion when you were seated and eating your meal it may have been 1 or 2 or 3 minutes. Is that substantially correct?

Mr. MITCHELL. I think that is substantially correct, to the best of my recollection, Senator. We did not engage in any long conversation about anything.

Senator HRUSKA. I read now from Mr. Hume's testimony at page 749 [of the typewritten record]. He is relating what Mrs. Beard told him in the interview that was in her home. Starting on the second line:

She said, or she indicated that she was introduced to the Attorney General and as she was going in to dinner he took her aside. There were the three of them, Mrs. Beard, the Attorney General, and Governor Nunn.

Do you remember any such incident on that occasion?

Mr. MITCHELL. No, sir.

Senator HRUSKA. Continuing to read—

Mr. MITCHELL. Let me say, Senator, that according to my good recollection on this encounter and confrontation, as I testified before, that her first approach to me was in a drawing room before we started in to the dinner.

Senator HRUSKA. I am going to read several excerpts here because while it is a tedious process to get a categorical denial or a firm answer

or comment, that occasion, that opportunity, should be given to you, in my judgment.

She said the Attorney General began to berate her angrily. He protested she had been causing trouble for him by writing and having given on the floor of both Houses of Congress a number of speeches which were either critical of the anti-trust decision or critical of the handling of the ITT matter in general.

Do you recall any such conversation?

Mr. MITCHELL. No, sir; none whatsoever.

Senator HRUSKA. Then, Senator Bayh asked, at the bottom of that page, "Have you any idea what time frame we are talking about?" And I leave out some material which was in Mr. Hume's testimony but it is an amplification of that one subject:

Mr. HUME. We are talking about the year or so leading up to the date of this meeting. This was something that had been going on for some time. She said the Attorney General was quite upset about this, and she said that the Attorney General had said that the White House, even the President, had called him and said to lay off ITT. I said, "lay off ITT, the President said that?" She said "no, I think it is badly put. I think it was something along the lines of, 'Make a reasonable settlement, would you please?'"

Did the President ever call you and say, "Lay off ITT"?

Mr. MITCHELL. Senator, the President has never talked to me about any antitrust case that was in the Department. The only conversations I have ever had with the President was early in the administration when we did discuss before, not litigation, not pending cases, but policies, and the discussions took place with the Council of Economic Advisers and some of the other Cabinet officers as to what our policies should be, and the policies that have developed out of the antitrust decision of this administration came basically from the concepts developed at that meeting.

But specifically, with respect to ITT or any other litigation, no, I have never talked to the President about it.

Senator HRUSKA. So that if there is an effort to say that the President called you and told you to lay off ITT or in the alternative, "make a reasonable settlement, would you please," that I presume would fall in the same category or comment?

Mr. MITCHELL. It would, most assuredly would. I can't imagine that the President of the United States pleading with anybody for anything. If he was going to talk to them he would tell them what to do.

Senator HRUSKA. On page 750 [of the typewritten record] from where I was reading Senator Bayh's time ran out but he resumed questioning at page 760 and Mr. Hume said, "Where were we, Senator?" Senator Bayh said, "This is on the credibility question."

Mr. HUME. As I recall, I was getting around to explaining Mr. Mitchell did object to the channels through which Mrs. Beard had proceeded. According to the versions Mrs. Beard gave me, the objection was not that she should not have approached him at the party but rather that during the course of the past period in which she had been lobbying here on Capitol Hill on behalf of her company she had not come to see him. In fact Mrs. Beard quoted the Attorney General as saying more than once, "Why don't you come to see me?"

Did that ever happen, Mr. Attorney General?

Mr. MITCHELL. I assure you, Senator, it most certainly did not.

Senator HRUSKA. (Reading):

She quoted the Attorney General as saying that he had known about her before ever coming to Washington and that he had been told or warned, I don't recall, she may have quoted that word, that she was the politician and he knew all about her.

Is that true?

Mr. MITCHELL. That is certainly not true. I am certain that I had never discussed with Mrs. Beard any of her abilities, characteristics or anything else during that brief encounter we had. As I responded to, I think, the chairman's question, I had heard about Mrs. Beard prior to the time that I met her in Kentucky.

Senator HRUSKA [reading]:

In fact she even said the Attorney General knew enough about it so that he asked about her son Bull Beard. As I indicated before, this version that she gave me was rather rich in detail. She said that his angry lecture of her went on for sometime and was somewhat rambling.

Would you care to comment on that testimony?

Mr. MITCHELL. I didn't know whether Mrs. Beard was married or not until I read about it in the paper here in the last week. I certainly didn't know whether she had any children and I certainly did really not berate her. I asked her in very strong terms to stop pressing me on this subject matter and to leave the table at which we were having dinner. To the extent that that is related to what you have just read I think it is the appropriate answer.

Senator HRUSKA. Then a final passage, reading at page 761 from the testimony of Mr. Hume:

I don't recall exactly the details of how she said the conversation ended. She did, however, say that he said, "what do you want?" clearly meaning what companies did ITT want to retain in settlement of the cases.

Do you recall any such question that you posed of Mrs. Beard?

Mr. MITCHELL. Absolutely not, Senator. I would point out that I didn't have any information about the ITT litigation so it would have been impossible for me to ask any such question.

Senator HRUSKA [reading]:

And finally she said as she had been prepared to say because of her conversations with the authorities of ITT, "We want Hartford Fire and part of Grinnell" and he snapped, "you can't have Grinnell." But he subsequently relented and indicated to her that they had something of an agreement on this.

Does that strike a familiar note, Mr. Mitchell?

Mr. MITCHELL. No, sir. I have never used that language since I used to play Monopoly as a kid. [Laughter.]

Senator HRUSKA. This is the last sentence which I shall read and ask you to comment on:

She indicated also that they didn't sit down and write out these specific solutions point by point in terms of the agreement but that they had kind of a politicians' agreement on Hartford Fire and part of Grinnell.

You have one final chance to comment on that.

Mr. MITCHELL. Senator, there was no such conversation whatsoever at that time or at any other time with any person who was related to ITT or anybody else.

Senator HRUSKA. If she asked all these questions, and you had all this exchange of conversations, it would have taken a longer time than all the time you indicated you spent together, would it not?

Mr. MITCHELL. I would believe so. Based on your reading of the transcript and my answers to it, it certainly would have taken longer than the total amount of time that I was involved in the encounters with Mrs. Beard.

Senator HRUSKA. Mr. Chairman, having dealt with Mr. Mitchell during all these 3 years of his office, I would say that the statements and record regarding the statements I have read are ludicrous and unbelievable.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tunney.

Senator TUNNEY. Thank you Mr. Chairman.

Mr. Mitchell, did you at any time ever talk about antitrust matters with Peter Flanigan?

Mr. MITCHELL. Oh, yes, very often.

Senator TUNNEY. What was the nature of those conversations?

Mr. MITCHELL. General policies of the administration.

Senator TUNNEY. When did those conversations take place, on a regular or on-going basis during the time that you were the Attorney General?

Mr. MITCHELL. No, they have taken place off and on during the past 3 years of the administration. They did not relate to specific cases. They related to general policies of the administration. We have had a number of on-going studies of an ad hoc group of their departmental group particularly as it relates to the matter of balance of payments and the fact that many foreign companies in foreign countries have advantages over us because of antitrust laws. There is an on-going study now on that subject.

Senator TUNNEY. In your conversations with Mr. Flanigan did you ever discuss the *ITT* case?

Mr. MITCHELL. No, sir. I am sure that is the case. I would have remembered it very distinctly because of my disqualification.

Senator TUNNEY. Do you recall what Mr. Flanigan's attitude was toward antitrust philosophy as it related to conglomerates?

Mr. MITCHELL. No, I don't recall ever having discussed it, the subject matter, with Mr. Flanigan. I think that our study groups—by the way, of which I only attended a limited number—they were carried on by Mr. McLaren and his staff dealt generally with other factors such as, I say, the international problems.

Senator TUNNEY. Did those study group meetings in which Mr. McLaren and you participated, did Mr. Flanigan participate on a regular basis too?

Mr. MITCHELL. I would—I don't know about the ones that I did not attend. It may have been at other staff levels along with the Departments of Commerce, Treasury, Council of Economic Advisers, and so on. There were probably during that period of time somewhere between three and five of these meetings which were held at infrequent occasions because the work in between was done by staff and then the principals would meet to review it.

Senator TUNNEY. And Mr. Flanigan attended those meetings?

Mr. MITCHELL. He attended a number of them. I don't know whether he attended all of them.

Senator TUNNEY. Would you care to characterize the nature of the discussions in a little bit greater detail than you have, those meetings?

Mr. MITCHELL. Well, with respect——

Senator TUNNEY. On antitrust matters.

Mr. MITCHELL. On antitrust matters?

Senator TUNNEY. Yes.

Mr. MITCHELL. The whole policy of the Government was reviewed when we came in, as I testified here a minute ago, with respect to the establishment of original policy. At that time, as you may recall, we had some very serious problems of inflation. The monetary picture, the financial picture was in bad straits, and the antitrust policy was examined in connection with that area.

As the staff continued to work on the matter they got further into the policy as it relates to the balance of payments and the competitive advantages of foreign governments and companies because of the restrictiveness of some of our antitrust laws, the study has not been completed to this date because there has been no recommendation coming out.

Senator TUNNEY. At any of these meetings that you attended in which Mr. Flanigan and Mr. McLaren were present to study these matters do you ever recall Mr. Flanigan disagreeing with the antitrust philosophy of Mr. McLaren?

Mr. MITCHELL. No, I do not. There may have been such occasions when I wasn't there. But the meetings that I attended, I do not recall any such conflict.

Senator TUNNEY. Was the antitrust philosophy of Mr. McLaren regarding conglomerates brought up at any of these meetings?

Mr. MITCHELL. No sir; that had been established policy which had been established earlier in the administration. It was the policy of the Department of Justice and it was not a subject for discussion.

Senator TUNNEY. Under the general guidelines that you, as Attorney General, laid down for the Department, would it be appropriate for a member of the White House staff to become involved in an antitrust matter?

Mr. MITCHELL. I don't know what you mean by involved, Senator?

Senator TUNNEY. Well, have any kind of involvement, any type of involvement in an antitrust, on-going antitrust matters?

Mr. MITCHELL. I still don't know what you mean by involved.

Senator TUNNEY. Having discussions with——

Mr. MITCHELL. Can somebody in the Council of Economic Advisors discuss with Mr. McLaren the effects of an antitrust suit or policy; yes. The antitrust divisions frequently, in most of the major cases, discussed it with the Council of Economic Advisors to ascertain what the impact was and what effect it would have. You just can't bring antitrust suits in a vacuum.

Senator TUNNEY. Would it be appropriate, for instance, for Mr. Flanigan to become involved in antitrust matters?

Mr. MITCHELL. It would depend on what the subject matter was.

Senator TUNNEY. Let's say ITT.

Mr. MITCHELL. I don't believe there would be any reason for Mr. McLaren to get involved in ITT——

Senator TUNNEY. Mr. Flanigan?

Mr. MITCHELL. McLaren naturally would have. No, there would be no reason at all for Mr. Flanigan to get involved in litigation relating to ITT.

Senator TUNNEY. And does that also mean that he would not be involved in the parameters of a settlement?

Mr. MITCHELL. In the what?

Senator TUNNEY. In the general parameters of a settlement?

Mr. MITCHELL. You mean in the negotiations of a settlement?

Senator TUNNEY. Yes.

Mr. MITCHELL. No; there would be no reason for Mr. Flanigan to be involved in the negotiations of a settlement.

Senator TUNNEY. Well, what about the development of information with respect to the negotiations for a settlement?

Mr. MITCHELL. Well now, what specifically do you mean, Senator, development of information?

Senator TUNNEY. Development of information which information would be used in the evaluation by Mr. McLaren as to what would be an appropriate settlement.

Mr. MITCHELL. Well, Mr. Flanigan would not be involved in the negotiations or the development of an appropriate settlement. If you mean was it proper for Mr. Flanigan to obtain an individual who had previously worked for the Justice Department as a financial expert in connection with the considerations by the antitrust division of this matter I would say yes, it would be quite appropriate, acting as a conduit, find out who the fellow was, where he was and bring him back to the Department to do the same thing he had done before.

Senator TUNNEY. Would it be appropriate for Mr. Flanigan to to specify what factors ought to be considered by an outside consultant in developing a financial analysis?

Mr. MITCHELL. I do not believe it would be appropriate.

Senator TUNNEY. If Mr. Flanigan did hire an outside consultant, and if he did specify the factor that should be considered in developing a report on financial considerations, do you feel that it would be appropriate for him to appear before this committee to discuss his role?

Mr. MITCHELL. Senator, I think that is entirely something for the determination by Mr. Flanigan and his supervisors at the White House. I have no judgment on the subject matter.

Senator TUNNEY. Well, I think we are talking about executive privilege, are we not?

Mr. MITCHELL. I am not sure—you may be, but I am not——

Senator TUNNEY. Well, wouldn't Mr. Flanigan, if invited by this committee to appear, wouldn't he under normal circumstances have to appear unless he were claiming executive privilege?

Mr. MITCHELL. Well, if he were invited, no, I think he could decline the invitation. If he were subpoenaed it might get into another area.

Senator TUNNEY. Well, let's just talk about executive privilege for a moment. What are the guidelines that have been laid down by the administration with respect to technical executive privilege?

Mr. MITCHELL. I am not sure that I can tell you all of them. The basic guideline is that the Executive, namely the President, has a right to have protected whatever information he wants protected and he has the right to execute that privilege. That is the basic guideline. They are considered on a case-by-case basis to see what the interest of the executive is before a determination is made.

Senator TUNNEY. And what is the role of the Attorney General in making such decisions?

Mr. MITCHELL. As I recall the directive, it may be an order, but the directive was that all requests for executive privilege outside of the White House and the other Departments are referred to the Office of Legal Counsel for consideration of the subject matter and that recommendation is made to the appropriate people in the White House before it is exercised. That I do not believe applies when you have the Chief Executive and his staff in the White House.

Senator TUNNEY. Is the Attorney General involved in the decision? The Office of Legal Counsel is in the Justice Department, is it not?

Mr. MITCHELL. Yes.

Senator TUNNEY. And is the Attorney General personally involved?

Mr. MITCHELL. Not on the normal day-by-day process. When they have problems they come to the Attorney General just like all the other Assistant Attorneys General come when they have problems.

Senator TUNNEY. The reason I ask the question is that on March 24, 1969, President Nixon issued a memorandum to the executive departments and agencies and it specified that the following procedural steps will govern the invocation of executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.

2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.

3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.

5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

Nevertheless, as I understand the memorandum, the Attorney General of the United States would have to make a recommendation to the President if he feels that executive privilege should be granted.

Mr. MITCHELL. Along with the department head, I think it provides, and that applies to the departments, as I understand it, and not to the personnel in the White House.

Senator TUNNEY. What would be the procedure for personnel in the White House?

Mr. MITCHELL. I am sure I don't know. I have never been involved in it.

Senator TUNNEY. As a former Attorney General——

The CHAIRMAN. Wait a minute. You have been 15 minutes. I am going to recess now until 2 o'clock.

(Whereupon at 12 noon the committee recessed until 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN (Senator Hart presiding). The committee will be in order.

The Senator from Kentucky.

Senator COOK. Thank you, Senator Hart.

Mr. Mitchell, in this morning's newspaper there was quite an article by a reporter for the Washington Post saying that a trial lawyer for the Justice Department did not sign the stipulation in Civil Action 13,320. Were you familiar with that?

TESTIMONY OF JOHN N. MITCHELL—Resumed

Mr. MITCHELL. I saw the article this morning, Senator Cook, but I know nothing about the background of it.

Senator COOK. In cases not having gone to trial, would it be necessary that the trial attorney sign a stipulation on a consent agreement?

Mr. MITCHELL. No, not legally. The Assistant Attorney General in charge of the antitrust department can sign individually as far as the law is concerned.

Senator COOK. The reason I ask you is I have in front of me the stipulation that is signed by nine lawyers from the Justice Department, and I know that six of those lawyers constitute 117 years experience in the Justice Department. I refer to Mr. Robert B. Hummel who came to the Department on August 23, 1944; Mr. Charles F. McAleer, who came on October 18, 1948, and had been there for 23 years at the time of the agreement on August 23, 1971; Mr. Raymond M. Carlson, who came in 1949; Mr. Widmar who came in 1961; Mr. Rowan who came in 1952; and Mr. Gardner who came in 1955. The rest of them, Mr. McLaren and Mr. Heier and Mr. Armistead, came during your tenure as Attorney General. It seems odd to me one would write a great big story and would not give credit to 117 years of experience in the Justice Department who concluded that the judgment and the stipulation relative to that judgment was a fair settlement for the Federal Government; don't you think?

Mr. MITCHELL. Well, I recognize some of those names, Senator Cook, as being rather high in the hierarchy of the antitrust division, and I would think the interesting question is which ones of those people that signed or failed to sign were the ones who were charged with the negotiations of the settlement.

Senator COOK. Well, I think what is more important also, Mr. Mitchell, and I hope you agree with me, is that if this experience means less than one economist who is now with the University of Virginia, who has been there for 1 year, then obviously the antitrust division when you got there certainly must have been in pretty poor shape.

Mr. MITCHELL. Well, I think that Mr. McLaren with his new enforcements policies attracted some people of tremendous talent there. I would not for a moment overlook the fact that in all of the divisions of the Justice Department we have some very able outstanding career people and that is what makes the Justice Department work.

Senator COOK. I might say that I really think he should have written in there, there is a line for the defendant, the Hartford Fire

Insurance Co. lawyer, to sign the consent agreement, and it is not signed so he must have thought that maybe they were not getting a good deal.

Mr. Mitchell, on the confirmation of Dean Griswold, my esteemed colleague from Massachusetts, who introduced him to the committee, said, and I read from the testimony and his remarks about Dean Griswold:

He will not only have charge of the cases involving the government in the Supreme Court. His will be the responsibility of deciding which cases the government should bring to the Supreme Court after losing in lower courts. His must be what Justice Frankfurter called the comprehensive view going beyond the more parochial interest of individual agencies and looking toward the larger role of the Executive Branch and its interrelationships with the other branches of government.

Now in that regard, Mr. Mitchell, I would like to read you from Dean Griswold's testimony the following on page 642 [of the type-written record] in answer to Senator Hruska:

Yes, Senator, there is a widespread misunderstanding about these cases. I have the Washington Star here of last Friday. On the front page it refers to "the Republican Administration's decision to abandon prosecution of three Anti-Trust suits." We did not abandon prosecution of three antitrust suits. We provided the settlement, we won two of the antitrust suits.

He goes on to say, "This morning's New York Times says, 'Before the Justice Department agreed to drop prosecution of the three suits.' Well," said Dean Griswold:

That is like saying you agree to drop prosecution of a criminal case because the defendant pleaded guilty. There were three suits and we substantially won two of them and, having won the two of them, we did not have any ground whatever for winning the third one, and this was in fact a very substantial victory for the government, and the first one in the whole conglomerate field, probably setting a great precedent in the area and, it seems to me, most misleading to keep telling the public that the government dropped three suits in the antitrust field. It did not.

Do you agree with that?

MR. MITCHELL. Based on Dean Griswold's statement I would certainly agree that there was no dropping or abandoning of suits. The only way they could be terminated were by decrees of the court, and I believe that Dean's characterization is most accurate.

SENATOR COOK. Mr. Mitchell, if the Government's policy was to divest corporations of similar corporate entities in the same field that had been owned by the corporations in an effort to establish a monopoly; if, in fact, ITT divested itself of the fire insurance division of Grinnell, divested itself of Hamilton Life, and divested itself of the Life Insurance Co. of New York, would there have been any legal basis whatsoever to continue a suit against ITT for its acquisition of Hartford?

MR. MITCHELL. Well, I do not know of the specifics, Senator Cook, but I gather from the way you phrased your question that what you were pointing out is that they have removed the anticompetitive factors from the conglomerate. If this be the case, of course, that is what these suits are brought for, to make sure that we do remove anticompetitive practices, and if the net result of the settlement of the case was to remove anticompetitive practices, that is the type of relief that the Justice Department seeks in its litigation.

SENATOR COOK. May I read, Mr. Mitchell, to you the order on a motion for entry of final judgment which was signed by Mr. Joseph

Blumenfeld, chief judge for the U.S. District Court for the District of Connecticut. I will read just part of it—I had better read it all; we have gotten into some trouble with people reading parts of things:

On September 23, 1971, parties in the above caption matters, government antitrust suits, moved the court for entry of final judgments in these matters in the form of "Consent Decrees." After both parties, in open court, gave a full exposition of the issues involved and of the considerations underlying the various provisions of the proposed settlement agreement, and the receipt of papers from the amici counsel, who had been granted leave to appear by the court, the court reserved decision on the motion.

At the outset, it must be borne in mind that the acquisitions which were the subject of the anti-trust actions at issue have never been adjudged illegal. The court is also cognizant of the statement of the United States Supreme Court in *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 689 (1961), that "sound policy would strongly lead . . . (the court) to decline . . . (an) invitation to assess the wisdom of the Government's judgment in negotiating and accepting the . . . consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting." There has been no such claim here. On the contrary, close scrutiny of the proposed decrees reveals that they are carefully tailored to eliminate the aspects of the acquisitions which the original complaints alleged to be illegal. Within the limits of existing statutory law and judicial power, the provisions of the proposed decrees constitute a commendable achievement toward safeguarding the public interest.

Accordingly, the motion for entry of the consent decrees as submitted by the parties is entered.

Dated at Hartford, Connecticut, this 24th day of September, 1971.

Now, Mr. Mitchell, let me just ask one more question, I think my time is up.

If, in fact, at the request of Mr. Kleindienst, these hearings will continue on, and if, in fact, it is the judgment of the Senate of the United States that Mr. Kleindienst should not be confirmed as Attorney General of the United States, does it then not follow as a result if, in fact, as Mr. Anderson has so recklessly contended, that conspiracy existed, that the next step would be to impeach Judge McLaren, and the next step after that would be to impeach the Solicitor General of the United States, Dean Griswold?

Mr. MITCHELL. I would believe that this or another appropriate committee would have direct responsibility in that area. I would find that on the basis of the allegations that have been made to date, most of them of course in the press, that if they found that for any reason Mr. Kleindienst was unqualified to be the Attorney General that those steps that you outlined should be considered.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Mr. Mitchell, as I understand it, the Assistant Attorney General for Antitrust comes to you in a merger case with a memorandum stating the reasons why he recommends prosecution and a proposed complaint. These questions do not, lead up to anything about ITT but for this record I think it would be useful if we got an outline of the general procedure.

Mr. MITCHELL. Yes, sir; this is so in all antitrust cases and, Senator, customarily there is a rather voluminous staff memorandum relating to the subject matter and then a shorter memorandum either signed by Mr. McLaren or his deputy making their recommendation.

Senator HART. Are you in a position to tell us how many proposed merger complaints you reviewed when you were the Attorney General?

Mr. MITCHELL. I would have to make a very doubtful guess, Senator. I guess it is probably somewhere between 50 and 70 over the 3-plus years.

Senator HART. When you got there, or after you got there, were there any written guidelines that you would apply in the 50 or 70, or whatever it was, cases?

Mr. MITCHELL. Yes, sir; there were guidelines prepared by the previous administration with respect to these matters, and we used, and continued to use those guidelines and followed them in most all cases.

Senator HART. If they are not in the record I would think it useful to have them in this record. The staff will do that.

(The guidelines referred to have been requested.)

Is it your recollection that you reviewed all proposed merger complaints except those where you affirmatively disqualified?

Mr. MITCHELL. Yes, sir; there is a requirement of the Department, and I believe the statutes, Senator.

Senator HART. Is this a time consuming thing or is it a burden that is light?

Mr. MITCHELL. It varies. You frequently have cases that involve horizontal merger which they try to do without the light of day on them, and they are very simple to show that you have a direct horizontal competition clearly within the guidelines, clearly within the decided cases, and there is very little problem to them.

You do get to other types of cases where it is much more difficult to ascertain when they fall within the guidelines or when they fall within the decided cases.

Senator HART. I asked Judge McLaren about one horizontal where he had recommended a complaint be filed, and had been overruled by the Attorney General. I think in that case it was you, not Mr. Kleindienst, in the *National Steel-Granite City* case. Do you recall what circumstance persuaded you, notwithstanding the guidelines, and the McLaren recommendation, not to sue, not to attempt to—

Mr. MITCHELL. Yes, Senator, I certainly do and I would be glad to answer it but I do not know what it has to do with Mr. Kleindienst's confirmation but since you asked the question I would be glad to answer it.

It was a case involving National Steel, I think, and Granite City Steel. It was a very close case that I had a great deal of trouble with and talked to Mr. McLaren at great length. It was not absolutely clear that it was in the guidelines because of different market areas. The guidelines relate to market areas, and you frequently have problems of determining what is a market area for a particular product. Of course obviously you can sell steel of different types all over the country and it gets to the point of whether or not a particular geographic location should be considered as the market area.

There was one other or two other factors in that case. It had to do with the difficulty that the steel industry was in. This particular merger provided a matching of facilities between the companies which would have improved their production capacity and, of course, their marketing capacity, and third, we had the problem of the substantial imports of steel which were having a harsh effect upon our domestic producers.

The total question of our steel industry had been the subject of a study. I believe, by the Council of Economic Advisers, in which these matters were raised and, in balanced, I came to the conclusion that it

would be more procompetitive to put these two facilities together than it would have been anticompetitive because of the nature of the physical facilities.

Senator HART. Well, when a decision is reached, such as the one in *National Steel and Granite City*, where at least in the minds of some outsiders it appears to be a merger that is not consistent with the guidelines, would it not be helpful if there were a filing of reasons and explanations rather than the uncertainty and on occasion suspicion that always attaches to these things?

Mr. MITCHELL. I would think that would be very profitable so long as it did not get into some of the confidential materials these companies have to submit to us in connection with these matters. I would subscribe to that.

Senator HART. The question I intended to ask before the recess, and it does bear on the subject matter, is this: When Mr. Geneen visited you, did he leave with you any written brief or documentation; do you recall?

Mr. MITCHELL. I do not believe so, sir. I do not recall but I do not believe so. As I say ours was what I would refer to as an entirely theoretical discussion.

Senator HART. The Senator from California.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Mitchell, before lunch I was questioning you about procedures to be followed where executive privilege is invoked, and we were discussing a memorandum from President Nixon dated March 24, 1969, which establishes a procedure that applies to heads of Government departments and agencies who are desirous of invoking this privilege. The memorandum that I read to you from President Nixon was attached to a letter from the President to the Honorable John Moss of California, the Congressman who was chairman of the House Foreign Operations and Government Information Subcommittee. I would like to read two sentences from the text of that letter:

I believe, and I have stated earlier, that the scope of executive privilege must be very narrowly construed. Under this administration executive privilege will not be asserted without specific Presidential approval.

Would you agree then, from the terms of this letter, that in each instance specific approval just be given by the President before the executive privilege can be invoked?

Mr. MITCHELL. Yes, sir, that is so stated in the memorandum that the President circulated at that particular time.

Senator TUNNEY. Under what circumstances do you feel that the President would be justified in giving his specific approval to a claim of executive privilege by Mr. Flanigan?

Mr. MITCHELL. In any circumstance in which the President decides to exercise it. That is his prerogative. That is why it is executive privilege.

Senator TUNNEY. Would it be, in your opinion, appropriate for the President to give his specific approval if the matters about which Mr. Flanigan is asked to testify are not matters involving his capacity as a confidential adviser to the President?

Mr. MITCHELL. Senator, when I am going to give the President advice on a subject matter, he is going to have to ask me for it. I am not going to give it to him in some committee hearing.

Senator TUNNEY. Well, we are dealing with a fairly significant point here, the question of executive privilege, and the parameters which can be followed by a President or by an Attorney General advising the President in allowing executive privilege to be granted to a member of the White House staff, and I am interested, as a member of this committee, and you being a former Attorney General, to get your opinion on what you think the scope of executive privilege is.

Mr. MITCHELL. Well, you would have to determine what the circumstances were, all of them, as known by the Chief Executive, and make a decision based upon that knowledge. I don't have that knowledge and, therefore, cannot advise you with respect to it.

Senator TUNNEY. Well, assuming that Mr. Flanigan was acting for the Justice Department, and he did not have confidential communications with the President, do you feel that he would be entitled to invoke executive privilege under those circumstances?

Mr. MITCHELL. Well, the individual does not invoke the executive privilege. That is invoked by the President.

Senator TUNNEY. Right.

Mr. MITCHELL. And he might have the power to do so but I am sure in this administration that it would not be invoked, certainly not under the areas in which it has been invoked to date in departments outside of the White House.

Senator TUNNEY. If he were acting——

Mr. MITCHELL. You said the Justice Department.

Senator TUNNEY (continuing). Acting for the Justice Department.

Mr. MITCHELL. That is correct. There would be no basis at all that I could imagine as to why an executive privilege would be exercised in connection with any activities by anybody in the Justice Department unless they, of course, related to advisory communications with the President or somebody in the President's immediate family.

Senator TUNNEY. But assuming that the understanding was that Mr. Flanigan would not be questioned about any confidential communications that he had with the President but rather with communications that he had with someone who was doing a study for the Justice Department, don't you believe that under those circumstances that it would be improper to invoke executive privilege?

Mr. MITCHELL. I don't know what the circumstances are, Senator, and I certainly would not make a judgment under any circumstances that it was improper for the Chief Executive to invoke that privilege. That is his privilege.

Senator TUNNEY. Of course it is his privilege, but it is a privilege that is granted to the President with respect to confidential communications that he has with his staff. It is not a broad privilege which he can invoke at any time he chooses with respect to a communication that a member of his official family has with outsiders, with people who are not a part of the official family.

Mr. MITCHELL. I don't think I would necessarily agree with that observation.

Senator TUNNEY. Well then, what would be, say, the parameters for the invoking of executive privilege; when can it be invoked?

Mr. MITCHELL. I think the executive privilege can be invoke most any time that the President wants to with respect to the members of his particular staff who are his advisers.

Senator TUNNEY. Irrespective of whether or not it involved a confidential communication with the President?

Mr. MITCHELL. I would believe that to be so.

Senator TUNNEY. Has there been a case in which the President has invoked executive privilege under those circumstances?

Mr. MITCHELL. I can't answer that question.

Senator TUNNEY. I would suggest to you that I am not aware of any time that a President has invoked executive privilege for a member of the White House staff where it does not relate to confidential communications between the President and the member of his staff over whom executive privilege is being invoked.

Mr. MITCHELL. Well, that may very well be true, Senator, but I am sure there are many areas in which confidential communications do flow that might be brought into the parameters of the decision.

Senator TUNNEY. As I understood your earlier statement you did suggest that if a member of the White House staff were acting for the Justice Department that it would not be appropriate to invoke executive privilege on the matters on which——

Mr. MITCHELL. Senator, I didn't understand you to say that. I understood you to say if Mr. Flanigan were working in the Justice Department or a member of the Justice Department.

Senator TUNNEY. No, no; I didn't mean that.

Mr. MITCHELL. I am sorry, I misunderstood you. That would be an entirely different picture and the answer I gave you in response to that would be inappropriate.

Senator TUNNEY. Could you perhaps answer the question again so that I do completely understand your meaning. If Mr. Flanigan were working for the Justice Department in the sense that as a member of the White House staff he were responsible for hiring outside consultants to do a study for the Justice Department, do you feel that with respect to the communications that he gave to that outside consultant that he could, or that the President could in his behalf, invoke executive privilege?

Mr. MITCHELL. He is still a member of the White House staff regardless of what incidental act he might have taken with respect to the business of the Justice Department, and I think the matter of executive privilege would continue to prevail.

Senator KENNEDY. Would the Senator yield?

Even if it is just a ministerial act? If the economist had gone out and got a consultant he would be up here testifying. Is it your position if Flanigan gets the consultant he can't come up here and tell 'us about that?

Mr. MITCHELL. Senator, you didn't hear the previous discussion.

Senator KENNEDY. No; I am asking you this question.

Mr. MITCHELL. I am stating in connection with an adviser to the President who works for the President, that he has, the President has, executive privilege in connection with the——

Senator KENNEDY. I understood that. I am asking you this now.

Senator GURNEY. I think 10 minutes has long ago expired and I didn't get my turn.

Senator KENNEDY. If we have these interruptions we are going to be here——

Senator HART. I recognized the Senator from California at 2:30.

Senator GURNEY. But you recognized him before you recognized the Senator from Florida who had not been heard yet.

The CHAIRMAN. They have got 10 minutes which will expire at 20 minutes of 3.

Senator COOK. I might say in all fairness, Mr. Chairman, I think the Senator from California knows this is his second time around and the Senator from Florida has not been heard yet. I think that was the point he wished to make.

Senator HART. All right. I was embarrassed when I did recognize the Senator from California. I thought it was an oversight on my part and I reported to the chairman. He tells me that no, as acting chairman I was then to go to the member to my right and then to the left.

Senator TUNNEY. I have another minute, I guess.

The President in his letter to Congressman Moss said that the executive privilege must be very narrow construed and my point simply is, do you think it is a narrow construction to invoke executive privilege if we are dealing with matters that have nothing to do with confidential communications between Mr. Flanigan and the President but have only to do with communications between Mr. Flanigan and an outside financial consultant?

Mr. MITCHELL. Didn't the letter to Congressman Moss pertain to the Executive order to the department?

Senator TUNNEY. Correct.

Mr. MITCHELL. And not to the personnel who worked for the President and the White House.

Senator TUNNEY. Are there any procedures to be followed with people who work in the White House?

Mr. MITCHELL. I am sure I don't sir. I know the procedure that we followed under the responsibilities of the Justice Department but I do not know whether there are or are not.

The CHAIRMAN. Your 10 minutes are up.

Senator GURNEY. Thank you, Mr. Chairman.

I was not going to ask any questions, but I think I would like to ask one. And that question is of you, Mr. Chairman, has a subpoena been issued to Mr. Flanigan?

The CHAIRMAN. No, sir.

Senator GURNEY. Then, Mr. Chairman, I must observe as part of my questioning that this line of questioning that we have just gone through here is totally a matter of semantics, of hypothetical cases, it has not arisen and it looks to me as though we are doing just what we have done day after day stalling and stalling and not getting to the real point of this.

Senator TUNNEY. Will the Senator yield?

Will the Senator join in an invitation to have Mr. Flanigan come?

The CHAIRMAN. Those are two entirely different things. I was requested to invite Mr. Flanigan. Nothing about a subpoena has been mentioned.

Senator GURNEY. That was my point, Mr. Chairman. So what we are engaged in here is hypothetical, an exercise in semantics that does not contribute anything to this hearing. Those are all the observations I have to make.

Senator COOK. Would the Senator yield?

Senator GURNEY. Yes, I yield

Senator COOK. Would not the question then really present itself, not only for discussion before this committee but as a matter for determination not by Mr. Flanigan but by the President of the United States, only if in fact a subpoena were to be issued and if in fact that subpoena were refused?

Senator GURNEY. That would be my understanding.

Senator COOK. It seems to me the issue would then be joined at least, now it is merely up for prolonged discussion.

Senator GURNEY. That is right.

Senator HRUSKA. Would the Senator from Florida yield?

Senator GURNEY. Yes, I yield.

Senator HRUSKA. On two occasions during the administration of President Truman, a subcommittee of the House Committee on Education and Labor issued subpoenas to John R. Steelman, who held the title "Assistant to the President." In both instances he returned the subpoena with a letter stating that "In each instance the President directed me, in view of my duties as his Assistant, not to appear before your subcommittee."

During the hearings on the nomination of Abe Fortas to be Chief Justice of the United States, the Senate Judiciary Committee requested W. DeVier Pierson, Associate Special Counsel to the President, to appear and testify regarding the drafting of legislation authorizing Secret Service protection for presidential candidates. It had been reported to the committee that Justice Fortas had participated in the drafting of this legislation at a time when he was sitting as an Associate Justice of the Supreme Court. Pierson declined the invitation, writing Senator Eastland as follows:

As Associate Special Counsel to the President since March, 1967, I have been one of the "immediate staff assistants" provided to the President by law. (3 U.S.C. 105, 106.) It has been firmly established, as a matter of principle and precedents, that members of the President's immediate staff shall not appear before a congressional committee to testify with respect to the performance of their duties on behalf of the President. This limitation, which has been recognized by the Congress as well as the executive, is fundamental to our system of government. I must, therefore, respectfully decline the invitation to testify in the hearings.

Senator COOK. Would the Senator from Florida yield further?

Senator GURNEY. Yes.

Senator COOK. I would like to put into the record a portion of pages 438 and 439 of the book, "Firsthand Report," by Sherman Adams wherein he goes into detail on how Attorney General Brownell wrote a decision based on executive privilege. The decision was based on an opinion written by the late Justice Robert Jackson of the Supreme Court when Jackson was the Attorney General. I might say that this instance did not have anything to do with the hearings that resulted in Mr. Adams leaving the Government. Rather it dealt with the Army-McCarthy hearings and I must say there might be some similarity.

(The excerpt referred to follows:)

EXCERPT FROM "FIRSTHAND REPORT" BY SHERMAN ADAMS, 1961

Although it had nothing to do with my declining to testify in this particular case, there was, as a matter of fact, a legal restriction against a Congressional investigative committee questioning a member of the President's staff about White House correspondence, telephone conversations and conference discussions. This question had come up during the Army-McCarthy hearings in 1954 when Senator McCarthy wanted to call me as a witness during those hearings to testify

about my role in the preparation of the Army's complaint on the Cohn-Schine affair. The Attorney General decided after careful consideration that the records of my conversations and correspondence in the case were privileged information of the executive branch of the government that could not be disclosed to the Congressional branch. Brownell based his decision on an opinion written by the late Justice Robert Jackson of the Supreme Court when Jackson was the Attorney General. Jackson held that the executive branch cannot be required to make public its confidential records. Actually, I was never invited to appear at the Army-McCarthy hearings but if I had received an invitation I would have declined it on Brownell's advice. I did decline on the same grounds an invitation to appear before Senator Kefauver's committee in 1955 to testify concerning my request for a postponement of the SEC hearing on the Dixon-Yates contract, mentioned in an earlier chapter. I felt in that instance that my connection with the Dixon-Yates negotiations was so slight that I could not have given the Kefauver committee any information pertinent to the inquiry that it did not already possess.

Senator GURNEY. I thank my colleagues. I certainly think all of us are learning a lot about the law of executive privilege but I really don't know much about why Mr. Kleindienst ought not to be Attorney General.

I yield my time.

The CHAIRMAN. Senator Hart?

Senator HART. I have no questions.

Senator TUNNEY. Mr. Mitchell, from your testimony apparently your office records indicate that you did not have a meeting in your office on May 17 with Lieutenant Governor Reinecke of California?

Mr. MITCHELL. That is correct, Senator Tunney.

Senator TUNNEY. Do your office records indicate the purpose of the Lieutenant Governor's visits to your office in April and in September?

Mr. MITCHELL. No, sir.

Senator TUNNEY. You mentioned that you discussed the space shuttle, aircraft production, and apparently other economic issues. Do you know why he was raising these issues with you?

Mr. MITCHELL. I don't really know except for the possibility he might have thought I might have some influence around the Government in connection with the appropriations, that is what I would surmise.

Senator TUNNEY. In other words, to get some of these contracts in California?

Mr. MITCHELL. I believe that was the purpose of his visit to Washington in these instances.

Senator TUNNEY. Did you get any contracts for him?

Mr. MITCHELL. I am not sure. I hope we did.

Senator TUNNEY. We would be very pleased. [Laughter.]

Mr. MITCHELL. I am certain the Senator, when they come about you will know about it.

Senator GURNEY. If the Senator from California would yield, I would hope the space shuttle was not one of those things that went to California. [Laughter.]

Senator TUNNEY. I am not going to prejudice California's case.

Are you aware of Lieutenant Governor Reinecke's statements quoted in the press on March 3, as to the dates and the purposes of his visits?

In the Washington Star of March 3, Reinecke is quoted as saying, "He," meaning you, "is my input to the political arm of the administration, so I touched base with him."

"He (Mitchell) is my input to the political arm of the administration, so I touched base with him," say Reinecke. "On one of those three days—don't recall which—I did meet with him because I was working hard to get the convention in San Diego."

In talking with Mitchell "to report on our progress," Reinecke says he gave the attorney general a complete report on the efforts to have San Diego selected as host city for the convention. Included in that briefing was a discussion of financial arrangements, according to Reinecke.

Asked if that included a discussion of ITT's financial commitment, Reinecke said: "Yes, we discussed it. That was part of the package we were offering to the party."

Reinecke also recalled that he had the impression during the meeting that Mitchell might have been informed about the ITT financial pledge even earlier by Rep. Bob Wilson, R-Calif., whose congressional district includes San Diego.

Did Mr. Reinecke ever discuss, to your knowledge, in May or April, the ITT offer to bring the Republican Convention to San Diego?

Mr. MITCHELL. No, Senator. As far as I can tell, Mr. Reinecke must have had me mixed up with somebody else because he didn't meet me in May, and I have also read in the paper he has retracted that statement since then about that meeting in May.

Senator TUNNEY. Yes, that is correct.

Mr. MITCHELL. And I might also add in response to that question that you had that I have not talked to Congressman Wilson about it at that time or since that time.

Senator TUNNEY. Mr. Reinecke was quoted in the Sacramento Bee on March 3d or 4th—I am not sure which date, but it is either the 3d or 4th, because I am quoting from the article that was introduced into the Congressional Record on March 13 by Congressman Waldie:

My discussion with Attorney General Mitchell concerning the convention was at 9:30 a.m. on September 17, 1971. This would have been the first time either of us" meaning himself and Mr. Gillenwaters, his aide, "discussed any such offer with the Attorney General.

Apparently Mr. Reinecke, in his refreshed recollection, recalled that he did discuss in September the details of the convention with you, but your statement is that he did not discuss that with you in September either.

Mr. MITCHELL. No, that is not my statement at all. I don't recall his having discussed it with me, and I am sure that this was not the prime purpose of his visit. There wouldn't have been any reason for him to come to talk to me about the convention; and there were other subject matters that he talked about when he came to see me. So, he may have talked about the convention in September for all I know. I have no recollection of it.

Senator TUNNEY. I see.

The reason I ask the question is because in your statement, as I understood you, in your statement before the committee you indicated that you had no knowledge of the details of the convention until you read it in the newspapers.

Mr. MITCHELL. No, no, I said I did not have any knowledge of any arrangement or undertaking between the Republican National Committee or ITT or any of its subsidiaries, on the city of San Diego or any of its agencies, or ITT and its subsidiaries and to this day I don't know what arrangements they have.

Senator TUNNEY. But Mr. Reinecke's statement would indicate that it had been raised with you, his second statement would indicate it had been raised with you, this question of involvement, in September, the September meeting.

Mr. MITCHELL. With Mr. Reinecke a part of this where he would come to me and explain to me what this arrangement was? This is what I am trying to get. It is quite possible Lieutenant Governor Reinecke mentioned the convention in San Diego and Sheraton Hotel or something else but it would have made no impression upon me whatsoever, I not having that interest in it.

Senator TUNNEY. Well Mr. Reinecke apparently was indicating that he, according to press reports, was acting as a member of the California Chamber of Commerce when he discussed the matter with you in the hope that the convention would be brought to San Diego, and that is apparently why he, according to Mr. Reinecke, brought the matter to your attention inasmuch as you were his main political contact with the administration.

Mr. MITCHELL. There are two points I would like to make.

First of all, he wouldn't be discussing it with me in September because I understand the decision had already been made and, furthermore, I think if you will ask Lieutenant Governor Reinecke it wasn't a main political contact, he had the economic development responsibility which the Governor had passed on to him which was the basis upon which he had contacted me about these matters.

Now, it is quite conceivable that the obtaining of the convention for the State of California would have fallen within that concept.

Senator TUNNEY. You see, as I understand Mr. Reinecke's two statements, he was only changing the date of the time that he mentioned in his second statement, not the substance of the conversations that took place with you.

Mr. MITCHELL. Well, I would think that would be very important, Senator.

Senator TUNNEY. The substance?

Mr. MITCHELL. The dates.

Senator TUNNEY. The dates?

Mr. MITCHELL. Because if you go back to the April date, and I think according to what Mr. Wilson, Congressman Wilson, said in the newspapers, that the first time the Sheraton Hotels Corp. involvement with the convention was on May 12 and I also understand that sometime during July the Republican National Committee or whatever committee makes these decisions had already picked the site so not having been in my office or talked to me about the subject matter obviously that didn't involve me.

Senator TUNNEY. Well, the problem that I have is that Mr. Reinecke on March 2 was quoted by the Sacramento Bee as saying:

"I discussed it with the Attorney General," Reinecke replied. "Whether I was the first one or not I didn't ask him but we did discuss it, and he was very pleased to see the progress we had made not just with Sheraton but with getting the City and the county to come around because the President had indicated apparently to him, never to me, that he would like to see it come to California, and so this, in other words, we are doing what they wanted to see done and so they were delighted to hear it."

which would indicate that this was a conversation that he had with you prior to the time——

Mr. MITCHELL. That is why I say——

Senator TUNNEY (continuing). of the convention.

Mr. MITCHELL. I say it must have been somebody else he talked to because he didn't talk to me during May, according to all of the records

that I have, and I understand from reading the newspapers that he went back and checked his records and has no record of having met with me.

Senator TUNNEY. Yes, I understand that is the statement that he has made.

Of course, his statement that he remembered meeting with you and you were delighted at the progress being made to get the convention to San Diego would indicate that the decision had not been made at the time he remembers having seen you. But inasmuch as you say that you have no independent recollection, that he must have been thinking of somebody else, would seem to indicate that Mr. Reinecke has a very bad memory.

Mr. MITCHELL. Mr. Reinecke's records probably are a little better to judge this better by than his recollection. It certainly would be mine. My records would be much better than my recollection of the dates of a particular meeting.

Senator TUNNEY. Well, Mr. Gillenwaters—

Mr. MITCHELL. Unless it happened to be the day of the Kentucky Derby. [Laughter.]

Senator TUNNEY. Mr. Gillenwaters was also quoted as having said he was present at the meeting, and his statement as to the facts initially was substantially the same as Mr. Reinecke's. Apparently he has a very bad memory on that issue too, which is one of the reasons that I am hoping that the Lt. Governor and Mr. Gillenwaters will have an opportunity to come and testify.

My time is up.

The CHAIRMAN. Yes. Do you have any more questions?

Senator TUNNEY. I have a few more questions.

The CHAIRMAN. How long will it take you?

Senator TUNNEY. I would like to finish these questions on this particular subject and then I have a few other questions as well, Mr. Chairman, on other subjects.

The CHAIRMAN. I understand there are no other questions?

Senator MATHIAS. Very briefly.

Senator SCOTT. I have just one question. I just wonder whether anybody had remembered to ask the Attorney General Whether he knew where Howard Hughes was but I think we will wait until Larry O'Brien comes up and he can tell us. [Laughter.]

The CHAIRMAN. All right, Senator Mathias.

Senator MATHIAS. General, the testimony earlier this morning, I think, was that you had disqualified yourself in all matters pertaining to ITT and other cases in which you had some professional relationship in private practice, is that correct?

Mr. MITCHELL. Or that the firm had, Senator.

Senator MATHIAS. Would you tell the committee the mechanism of that disqualification? How did you notify the Department that you were going to take yourself out of this class of cases?

Mr. MITCHELL. Well, each, not only the Attorney General, but the Deputy Attorney General and the other heads of the Department and other people with places of responsibility in the Department, file a list of such former clients or conflict of interests and the division, such as the Anti-Trust Division, that have matters for submission to the Attorney General are supposed to be cognizant of that list and, of course, to act accordingly.

There is one other screening facit, that is in my case, and that is my executive assistant also has that list and, of course, he handles most of the paper flow and can also screen them.

Senator MATHIAS. Well, in the paper flow, if you disqualified yourself or some other official of the Department had disqualified himself would you then be omitted from the distribution list as far as that case was concerned, of cases involving that particular item?

Mr. MITCHELL. Yes.

Senator MATHIAS. An you would not normally then see the normal, day-to-day traffic in that particular project?

Mr. MITCHELL. No, sir.

Senator MATHIAS. Now, one other thing, reading now from one of the Dita Beard memorandum which, after all, is why we are all here together—

Mr. MITCHELL. I didn't understand it that way, Senator. I thought this was a hearing on the confirmation of Richard Kleindienst.

Senator MATHIAS. Well, it started out that way. The second session, I think, was occasioned by the publication of the Dita Beard memorandum. In view of the fact that your name is mentioned in it I might bring to your attention two quotations from any comment that you would like to make. One of them is this:

You can't imagine how many queries I have had from "friends" about this situation and I have in each and every case denied knowledge of any kind. It would be wise for all of us here to continue to do that, regardless of from whom any questions come; White House or whoever. John Mitchell has certainly kept it on the higher level only, we should be able to do the same.

Mr. MITCHELL. The comment that I would have to make about it is that part of it might be true. Because not having anything to do with it one way or the other it certainly was at high level. [Laughter.]

Senator MATHIAS. And the second one, I think the only other reference in the memorandum to you, is this:

Certainly the President has told Mitchell to see that things are worked out fairly. It is still only McLaren's mickey-mouse we are suffering.

Mr. MITCHELL. Well, Senator, I have testified this morning to the effect that there has never been any communication between the President and myself with respect to this antitrust legislation—litigation or any other antitrust litigation.

Senator MATHIAS. I think that is very helpful to have your direct testimony on this point because it was after the publication of this memorandum that Mr. Kleindienst requested a second session, and I think that your direct testimony on these two points in which you are mentioned in the purported memorandum is very valuable in completing the record for the committee's consideration and I thank you.

Mr. MITCHELL. Yes, sir.

Senator ERVIN. I ask you this question because I understand there was some colloquy between you and one of the members of the committee in reference to the question of executive privilege. I would like to ask you this question: Where a congressional committee desires the testimony of an executive officer or employee, the question of whether executive privilege should be invoked is a matter which is committed to the discretion of the President and is not obligatory on him to invoke it?

Mr. MITCHELL. That is correct, Senator. Senator Tunney and I went over the Executive order that is operational in this administration, and there is the screening process that finally winds up on the President's door and he makes the final decision.

Senator ERVIN. Thank you. That is all.

Senator KENNEDY. Well, just in terms of that, Mr. Kleindienst, I mean Mr. Mitchell. [Laughter.]

Mr. MITCHELL. A Freudian slip.

Senator KENNEDY. Tell me, do I gather from what you have suggested here that if Mr. Flanigan is invited, it will be finally up to the President whether he will come down or will not?

Mr. MITCHELL. No, I don't believe that will be the case. I think that the question will be determined whether or not the nature of the invitation, who it comes from, whether it represents the committee.

Senator KENNEDY. If it comes from the committee? If it is an invitation by the chairman of the committee to come down?

Mr. MITCHELL. Then I think the determination will be made for or against the basis of executive privilege. I don't think you are going to have to invoke the subpoena power in order to get a—

Senator KENNEDY. I am not suggesting that. I am just asking if he is invited to come down, what can you see would be the reasons that he wouldn't come?

Mr. MITCHELL. I haven't the faintest idea. I know nothing about Mr. Flanigan's participation or lack of participation thereof in this matter or whether he has communicated to the President about the subject or what the circumstances are. I just can't answer it.

Senator KENNEDY. You have certainly read and followed this case, I am sure, with some interest. What would be your advice, as the former Attorney General, to Mr. Flanigan whether he should or should not come?

Mr. MITCHELL. I would have to sit down and talk to Mr. Flanigan to get all of the facts before I would give him any advice.

Senator KENNEDY. What kind of facts?

Mr. MITCHELL. Facts relating to his activities in the White House with respect to anything that bears on the subject matter in its relationship to the President.

Senator KENNEDY. Well, if we take the facts as outlined by Mr. McLaren, as the person who was in charge of this case, that the only action that was performed by Mr. Flanigan was the selection of Mr. Ramsden. If we just take the facts as testified to here—or do you know of other facts?

Mr. MITCHELL. I don't know of any other facts and if those are all the facts then I don't know what you would want Mr. Flanigan for.

Senator KENNEDY. Don't you think it would be useful to have Mr. Flanigan here to tell us about what conversations he had with Mr. Ramsden, and what were his instructions to Mr. Ramsden?

Mr. MITCHELL. Well, that is a difficult question and you just presented it to me, Senator.

Senator KENNEDY. Well, these would be questions that we might ask. I am asking you, based upon the information that has been made available to any of us on this committee, and that is all we can go on, Mr. Mitchell, what Mr. McLaren said was the role of Mr. Flanigan. Now all we have is what Mr. McLaren has suggested, and also some various newspaper reports.

Just based upon that, don't you feel, as a former Attorney General of the United States, that it would be worthwhile or useful in achieving the appointment of Mr. Kleindienst, of clearing up whatever smoke has come to the scene, to have Mr. Flanigan come here?

Mr. MITCHELL. I don't think it has anything to do with the appointment of Mr. Kleindienst. Nothing whatsoever.

The CHAIRMAN. That certainly does not.

Senator KENNEDY. You don't think that the presence of Mr. Flanigan here would be helpful or useful to the members of this committee in trying to relieve whatever insinuation has been placed upon Mr. Flanigan, whether rightfully or wrongfully, in the terms of the ITT case?

Mr. MITCHELL. I would believe that to be the case. But if you asked me as to whether or not he should come——

Senator KENNEDY. What would be the case?

Mr. MITCHELL. That is based upon a conglomerate of facts, of all the circumstances that are involved and you must know that that decision has to be made on those circumstances, his relationship in the White House, whatever, with respect to the subject matter and I can't answer you with a legal opinion or even an informed judgment until I knew all the facts and circumstances.

Senator KENNEDY. You would need more than just what has been available to any of us?

Mr. MITCHELL. Yes, sir, I would believe so.

Senator KENNEDY. I think we do, too.

Could we get back to what we were talking about earlier today on the discussion of the case with Mr. Geneen?

Mr. MITCHELL. May I correct that, Senator, it was not a discussion of the case.

Senator KENNEDY. The discussion of antitrust policy.

Mr. MITCHELL. We don't want to leave that implication in that relationship.

Senator KENNEDY. I think that is fair enough.

The discussion of the antitrust policy with Mr. Geneen. You can see why we might think he was discussing the case, having read Mr. Geneen's press statement. I mean where he indicated that he did talk about the ITT case.

Mr. MITCHELL. Let's not leave the impression he talked to me about it.

Senator KENNEDY. Fine. Well, this is just an implication we have gathered from Mr. Geneen, but let's move on. In talking about the antitrust policy, can you sort of review with us how that meeting came about, for the benefit of the committee?

Mr. MITCHELL. My recollection is to the effect that somebody in the Washington office of ITT, I am not sure who it was, called my secretary and asked——

Senator KENNEDY. Is there any way we can find that out?

Mr. MITCHELL. Maybe ITT has a record, I don't know.

Senator KENNEDY. All right.

Mr. MITCHELL. Called my secretary and asked for the appointment. She, of course, did not make the appointment. She came in to me, explained who it was who had called. I explained to her the limitation upon, the grounds upon, which I would talk to Mr. Geneen. She went back, and explained them to the people at ITT. Mr. Geneen came in and set the ground rules and we had the conversation.

Senator KENNEDY. Can you tell us a little bit about what you told the secretary to tell the X person who called your office to tell Mr. Geneen?

Mr. MITCHELL. I told her they should recognize with respect to the ITT litigation I had disqualified myself, that I would not talk to anybody about the litigation with ITT, that if Mr. Geneen wanted to come in and talk with me as he had stated about the antitrust policy of the Government that I would do so on that basis, on that basis alone.

Senator KENNEDY. And you didn't at that time, when the first contact was made, suggest that he go see Mr. McLaren?

Mr. MITCHELL. No; I did not.

Senator KENNEDY. Can you—you didn't tell him to go see Mr. Kleindienst?

Mr. MITCHELL. No, I did not, not to talk about the policy of this administration with respect to antitrust matters. They were my responsibilities not McLaren's or Kleindienst's.

Senator KENNEDY. Now, I think we went over a little bit this morning about what the antitrust policy as that dealt with conglomerates was; did we not, this morning?

Mr. MITCHELL. Yes, sir; particularly with respect to this conversation with Mr. Geneen.

Senator KENNEDY. Is it not so, as you mentioned this morning, that the major facet of that whole antitrust policy was the suit or the trial of the ITT cases?

Mr. MITCHELL. No, Senator; that certainly was not. We had had previous and continuing conglomerate merger antitrust suits in connection with Ling-Temco-Vought and B.F. Goodrich and British Petroleum and any number of other ones.

Senator KENNEDY. How many had you actually filed?

Mr. MITCHELL. I can't tell you. I do remember those because they were some of the larger.

Senator KENNEDY. Was it less than a half dozen?

Mr. MITCHELL. I can't tell you what characterization it would fall into as you describe conglomerate mergers.

Senator KENNEDY. Well, it is my understanding that there are approximately a half dozen which were filed.

Mr. MITCHELL. It may be, of the size and magnitude that we are talking about here.

Senator KENNEDY. Of the half dozen, three dealt with ITT?

Mr. MITCHELL. No; there would be more than a half dozen if you counted ITT as three. I just named three others.

Senator KENNEDY. That were on for trial?

Mr. MITCHELL. That were involved in this policy. There probably are more.

Senator KENNEDY. You mentioned LTV. Of course, that had been settled?

Mr. MITCHELL. When. Not in 1970, Senator. To the best of my recollection—

Senator KENNEDY. When was that settled; do you remember?

Mr. MITCHELL. It seems to me it was settled in 1971, sometime in the spring. You see this conversation that I had with Mr. Geneen was in August of 1970.

Senator KENNEDY. Well, there might have been what, seven cases, I mean, do you—

Mr. MITCHELL. I don't know, but, as I say, I have just named, if you count three of them with ITT, I have just named three or four more.

Senator KENNEDY. Three or four more. But at least three out of six or three out of seven is approximately half of the cases that were being pursued by the Antitrust Division dealt with ITT. I mean we might say three out of seven or three out of six, and you understood that; did you not?

Mr. MITCHELL. Did I understand what?

Senator KENNEDY. There were three cases that dealt with the very basis of antitrust policy by this administration that were up for trial.

Mr. MITCHELL. I understood that there were three cases of ITT and I understood there were others that involved it and if we had not adopted this policy that we did I am sure there would have been a hell of a lot more.

Senator KENNEDY. Business Week in its editorial of August 7, 1971, entitled "The Antitrusters Cop Out," which I will ask to be included in full in the record, points out in paragraph 2:

The ITT cases were promoted by the Nixon Administration as an attempt to establish a clear judicial definition of the limits of corporate growth in a modern society. By suddenly agreeing to accept the settlement, the government antitrusters have thrown away the chance to do that.

It certainly would appear to me, Mr. Mitchell, that these cases were just absolutely basic and fundamental to the Justice Department's pursuit of its antitrust policy, and when Mr. Geneen comes down and talks to you even in a general way about antitrust policy, that that conversation by definition has to reflect on what is going to be the future outcome of the Justice Department's handling of the ITT cases.

(The editorial referred to follows:)

THE ANTITRUSTERS COP OUT

The sudden settlement last weekend of the government's package of antitrust cases against International Telephone & Telegraph Corp. is a singularly unsatisfying end to an important episode in government-business relations.

The ITT cases were promoted by the Nixon Administration as an attempt to establish a clear judicial definition of the limits on corporate growth in a modern society. By suddenly agreeing to accept the settlement, the government antitrusters have thrown away the chance to do that. They have added another scalp to the Justice Dept.'s belt, but they have not done anything to clarify the vague legal rules under which merger-minded corporations must operate.

Clarification not only of the law but of the economics of mergers is badly needed (page 58). Very little serious investigation of the implications of corporate bigness has been undertaken in this country either by the government or by students of business. It will take a major series of legal tests, ending in the Supreme Court, to prompt the rigorous analysis necessary to determine how big and how fast a company can grow without endangering the public interest.

The antitrusters apparently yielded to the temptation to trade off long-term strategy for an immediate victory. Antitrust chief Richard McLaren himself acknowledges that he missed a shot at a landmark decision because "it is a lawyer's job to get a satisfactory conclusion to a case as rapidly as possible."

This is a perfectly proper attitude for a company lawyer—as ITT's legal team clearly concluded. But it is not right for the chief architect of the government's antitrust policy.

If McLaren and his lawyers feel that the mushroom growth of the conglomerate corporations threatens the U.S. economy and infringes the antitrust laws, then it is their duty to push the point with the courts until the law is established beyond question. It is not fair either to the companies involved or to the public to keep on brandishing the antitrust gun without ever proving that it really is loaded.

Mr. MITCHELL. Senator, that is your characterization, it is not mine. I have stated this morning that I thought anybody had the right to go into any department and talk to anybody so long as there wasn't a conflict of interest. The antitrust policy of this administration is well-known and it has been carried out, and there wasn't any possibility of construing it otherwise on the basis of that conversation that I have testified to in which I told Mr. Geneen that he did not understand the antitrust policy of this administration, I told him he was wrong on it, and that there was no change made in it after his conversation with me. Now if you are looking to the impropriety of the meeting it is absolutely untrue. If you are looking to the results of the meeting there were no results.

Senator KENNEDY. Mr. Geneen, in his release, indicated that he talked to other high Government officials within the administration, and also Mr. Walsh in his letter expressed a view that high Government officials within the administration had been talked to about the ITT case.

Mr. MITCHELL. Or the antitrust policy.

Senator KENNEDY. Or the antitrust policy. Did any of the other high administration officials ever talk to you about the ITT case or about the anticonglomerate policy of the administration?

Mr. MITCHELL. Not—let me answer your two questions separately. With respect to ITT cases, no. With respect to the policy that we had dealing with conglomerates, yes, there were very extensive meetings on that at the beginning of the administration.

Senator KENNEDY. In the beginning of the administration?

Mr. MITCHELL. That is correct.

Senator KENNEDY. And when did those take place, sometime in early 1969?

Mr. MITCHELL. I would believe in the spring or early summer of 1969, I am not that exact in my recollection.

Senator KENNEDY. During this series of meetings or hearings, did they consider all the implications of this type of antitrust policy of moving against the conglomerates, the balance of payments, the ripple effect?

Mr. MITCHELL. That was the purpose of the meeting.

Senator KENNEDY. What was so persuasive, I mean what changes were brought about, that you feel that were persuasive in terms of antitrust that you would have had sort of a major reversal in the pursuit of the conglomerates?

Mr. MITCHELL. Are you talking about the settlements of the ITT cases and the *Ling-Temco-Vought* case—

Senator KENNEDY. The decision to accept it.

Mr. MITCHELL (continuing). Are you talking about that as a reversal of policy?

Senator KENNEDY. I would say—

Mr. MITCHELL. It is not a reversal of policy, it is a confirmation of the policy.

Senator KENNEDY. I would certainly say the ITT settlement was.

Mr. MITCHELL. It was not a reversal of the policy, it was a confirmation of the policy.

Senator KENNEDY. Well, if you have read, as I have, Mr. McLaren's views as expressed in those memorandums to the Solicitor General, the four that have been provided to the committee, where time and

time again Mr. McLaren stressed the point of view that the Nixon antitrust policy was being tested by the ITT case; and then if you have heard, as we have heard, during the period of these last few days that the basis of the turn around in terms of a settlement was based upon the Ramsden memorandum based on 2 days of research, Mr. Mitchell—then I think there are very reasonable grounds to assume that there has been a major turnaround.

Mr. MITCHELL. Senator, can we review what you have been saying?

Senator KENNEDY. Yes.

Mr. MITCHELL. Let me point out, as I understand the Ramsden memorandum, one with respect to the financial impact of the divestiture of Hartford or whatever the name of the insurance company, do you know how long it would take anybody who has got the facts and figures to make a determination of a financial impact of divestiture? It certainly wouldn't take more than 2 days. It is simply the financial impact of that divestiture. It is all in numbers.

Let me also point out in the balance of your statement, that the settlement, as I have read about it in the newspapers, relates to these circumstances, was a confirmation of the antitrust policy of the administration. It was not a denial of it or an abrogation of it. All you have to do is look at what this conglomerate was and look at all of the billion dollar assets of all of the companies that were divested. That was a confirmation of the policy of this administration.

Senator KENNEDY. That is so simple as you have described it here in terms of, I guess, your understanding of the Ramsden report, why don't you think that ever occurred to your highly trained, highly informed, highly dedicated, committed economists and financial people in the Antitrust Division?

Mr. MITCHELL. Senator, there is a complete difference between an economist and a financial analyst. The economists don't get into this type of thing.

Senator KENNEDY. So suddenly someone had sort of a bright idea about the financial aspect and then it all became enormously clear—is that what you are giving us to understand?

Mr. MITCHELL. No, no; let's go back and recognize the fact the same gentleman was used in the LTV case for the same purpose.

Senator KENNEDY. What can you tell us about that case? Were you in charge of that case?

Mr. MITCHELL. I was in charge of that case to the extent that I authorized the beginning of the lawsuit, and Mr. McLaren came and discussed with me the settlement.

Senator KENNEDY. Did you know if Mr. Flanigan was involved in that case?

Mr. MITCHELL. I am sure he was not.

Senator KENNEDY. You never came across Mr. Flanigan's name in the LTV case?

Mr. MITCHELL. No, sir; I did not.

Senator KENNEDY. Mr. McLaren had inferred that he thought Mr. Flanigan had also arranged for Mr. Ramsden to do a financial report on that one.

Mr. MITCHELL. It is quite possible but it wouldn't come to my attention.

Senator KENNEDY. Well, that would all be Mr. McLaren's responsibility?

Mr. MITCHELL. Oh, yes; very much so. As I said, Senator, I authorized the complaint in that case and Mr. McLaren discussed the settlement with me.

Senator KENNEDY. Did you know Mr. Ramsden was involved in that case?

Mr. MITCHELL. No, sir; I do not. I don't know Mr. Ramsden.

Senator KENNEDY. Would it have concerned you as the Attorney General that Mr. Ramsden was a White House fellow when he was writing this report on that case?

Mr. MITCHELL. It would depend entirely upon what his capabilities were and what the report was to be used for.

Senator KENNEDY. But it wouldn't bother you if he wrote the report itself as a White House fellow?

Mr. MITCHELL. Of course not, if he had capability of doing it, no reason at all why it should.

Senator KENNEDY. You mentioned here that you are not surprised that Mr. Flanigan or the White House might have been involved in the LTV case?

Mr. MITCHELL. I said to the best of my recollection Mr. Flanigan was not involved in the LTV case.

Senator KENNEDY. Well, if you knew that he was, what would that mean?

Mr. MITCHELL. In what way?

Senator KENNEDY. Well, in selecting the financial analyst.

Mr. MITCHELL. You mean selecting one or getting one for Mr. McLaren?

Senator KENNEDY. Getting one, selecting one.

Mr. MITCHELL. Well, it would depend upon the circumstances. If Mr. McLaren had asked Mr. Flanigan, with Mr. Flanigan's background in the financial community, did he know of somebody who was capable of providing such a financial report I would find nothing wrong with it.

Senator KENNEDY. You think it is possible that Mr. Flanigan had perhaps selected other people, other financial analysts for other cases as well that were being done by the Justice Department—that does not bother you?

Mr. MITCHELL. I don't think it has occurred, Senator.

Senator KENNEDY. Do you know whether it did occur?

Mr. MITCHELL. No. I do not.

Senator KENNEDY. You don't know whether it occurred in the LTV case?

Mr. MITCHELL. That is correct but I have since learned that and it has not disturbed me one iota. You see these judgments are based upon determinations that go beyond the financial report.

Senator KENNEDY. Mr. Flanigan issued, I believe it was in April 1969, a memorandum which, in connection with agency duties, I guess it was May, warning White House staff members of interference in cases before regulatory agencies. He knows such cases are very closely watched for any instances of improper procedure or influence, and he warned them to avoid influence or appearance of influence.

Do you think Mr. Flanigan's role in LTV or ITT cases would fall under the mere appearance of interest or influence?

Mr. MITCHELL. Did his memorandum relate to regulatory agencies?

Senator KENNEDY. Yes.

Mr. MITCHELL. Well, the Justice Department is not a regulatory agency, Senator, that is part of this administration.

Senator KENNEDY. You don't think antitrust cases are regulatory in nature?

Mr. MITCHELL. I don't think that antitrust cases, if you are talking about litigation, are any more than carrying out the laws of this country no matter what, whether they pertain to the criminal law, civil rights, or whatever.

Senator KENNEDY. You think the White House can, should, or should not be involved in any kind of cases involving either antitrust or cases from the White House—

Mr. MITCHELL. What do you mean by "involved"?

Senator KENNEDY. Well, either involved in the appearance—take this case, take this case here. I will take this one right here.

Mr. MITCHELL. Do I think somebody in the White House should call up McLaren and say, "Settle the case"? Absolutely not. Of course not. If you are talking about it in a substantive way, that is a judgment to be made by the lawyers in the Antitrust Division and the Attorney General who has the responsibility, no. But what do you mean by involved? Do you mean did he act as a conduit in order to get a financial expert? That is not being involved.

Senator KENNEDY. What if he gives that financial expert instructions, as was reported in the newspaper. I don't know whether he did or not.

Mr. MITCHELL. What instructions would there be?

Senator KENNEDY. That is why it might be useful to have Mr. Flanigan here. I wonder if he did give instructions.

Mr. MITCHELL. What other instructions could there be except what would be the financial impact of the divestiture of Hartford? That was the whole point, wasn't it? That would be the instruction or questions.

Senator KENNEDY. So it wouldn't be—if those were the instructions, then there shouldn't be any problem with Mr. Flanigan coming up and indicating it if that is all he has done.

Mr. MITCHELL. Senator, I think we have been over that ground and I think you will have to ask Mr. Flanigan that question.

Senator KENNEDY. I hope I have the chance to do so.

Let me, if we could, move into another area. This is the interagency committee. You mentioned this morning an interagency committee to review antitrust policy.

Will you tell us a little bit when this committee was set up—was this the same committee as in 1969?

Mr. MITCHELL. I believe it was a continuing process from that time on where the meetings had started and it continued on throughout the administration at lower levels and, as I said, I was only involved in three or four meetings. As I pointed out earlier in connection with it that it considered the steel industry, it considered our problems with foreign governments and foreign corporations. It is an ongoing review of antitrust problems and their effect on the economy and some industries.

Senator KENNEDY. Who was, do you know who was, on that committee, what representatives were on it?

Mr. MITCHELL. Yes; there were representatives of the Council of Economic Advisers, the Treasury, Commerce, Justice, and people from the White House, I believe.

Senator KENNEDY. And they had meetings, they had a series of meetings?

Mr. MITCHELL. I am sure they had a substantial number of them. I can't tell you that.

Senator KENNEDY. How active were you in that?

Mr. MITCHELL. I would think over that period I had probably been to three or four meetings.

Senator KENNEDY. Did you have a representative from the Department?

Mr. MITCHELL. Yes; in the Antitrust Division I know Mr. McLaren attended some and I presume there were others.

Senator KENNEDY. Is it your understanding that they considered the balance-of-payments problems, and the ripple effect of conglomerates, and the other impact or policy considerations affecting the administration's antitrust policy as it related to the Department?

Mr. MITCHELL. As you call it, the conglomerate question was considered quite early in the administration. With respect to the balance-of-payments aspect of it I think that came in more in the consideration of the problems that this Government and businesses have with foreign governments and foreign businesses where we were at a disadvantage.

Senator SCOTT. Mr. Chairman, could I raise a question of relevancy here? I would like to raise the point that we are bound in the Senate by a rule of germaneness. We are bound in the courts by a rule of relevancy. We don't seem to be bound here by anything but a nonrule of inanity but I would like to raise the question at this point. Are Senators expected to be relevant to the issue before us, the nomination of Mr. Kleindienst, or are they entitled to ask questions on any subject which occurs to their staff or not? It seems to me a question ought to be raised at this point in the proceedings when, in my judgment, an obvious stalling procedure is going on, an obvious delaying procedure, an obvious filibuster, and I think the rest of us also have valuable time. We are required to be in a number of places. We are unable to be on the floor of the Senate. We have other committee meetings and we have to listen to questions being asked five, 10 and 20 times in unendurable repetition, and with a singular lack of originality, and it seems to me that the other members of this committee are entitled to some consideration under the circumstances. I want to raise the question of relevancy when within 20 or 25 minutes the questions of 10 minutes expire.

Senator HRUSKA. Besides, another important witness is waiting.

Senator HART. In fairness to my colleague from Massachusetts, I think an understanding of the interagency committee, to review antitrust policy, a matter that was introduced first by Judge McLaren as I remember, is completely relevant and may be helpful.

The CHAIRMAN. There is a rollcall vote in the Senate. Hugh, I couldn't agree with you more but a Senator has the right to ask questions.

(Short recess.)

Mr. HOLLOMAN. The chairman has asked me to announce that these hearings are recessed until 10:30 in the morning.

(Whereupon, at 4:05 p.m., the hearing was recessed, to reconvene at 10:30 a.m. on Wednesday, March 15, 1972.)

RICHARD G. KLEINDIENST

WEDNESDAY, MARCH 15, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young of the committee staff, and various assistants to Senators.

The CHAIRMAN. The committee will come to order.

Senator COOK. I am wondering if I might have about 5 minutes, and then on the first go-around I can be excused and go on to other members of the panel, if no one objects?

The CHAIRMAN. Go ahead.

Senator COOK. Mr. Chairman, I hope that this Senator is a responsible Senator, and that, I expect, will be judged by the people that I represent and by those who write about me; but I have never been more amazed in my entire lifetime than I was this morning. I have never been more shocked at the total and complete irresponsibility of people who are conducting the writings that are going on out of this room in regard to these hearings.

First, Mr. Chairman, I wish to put into the record the copy of this morning's New York Times, New York, Wednesday, March 15, 1972. "All the news that's fit to print." I guess that goes for pictures, too. On the front page of the New York Times, Mr. Chairman, is a picture and it says, "At ITT hearing, former Attorney General John Mitchell, right, having a final word with William Merriam, ITT vice president, before testifying before Senate Judiciary Committee yesterday. Controversial memo was addressed to Mr. Merriam."

Now, Mr. Chairman, if the news media doesn't know Robert Mardian, who is an Assistant Attorney General of the United States, it has no right in these hearings even writing about them in the first place.

Second, last evening, the Washington Star, in its coverage said therein that the Attorney General met with Mr. Geneen in the summer of 1971 when he said over and over and over and over that it was in the summer of 1970. Where is the responsibility of the writers in this case?

I refer again to a front page article, this in the Washington Post, and I thought I was reading a Jack Anderson column because it said

therein, "Also present at those two meetings, Mitchell said, was White House aide Peter M. Flanigan." Now, was the impression that the meeting between Rohatyn and Flanigan was for the purpose for which the writer wanted to impart to his readers? Didn't he listen to the statement and didn't he get a copy of it when he said:

I would like particularly to call the Committee's attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the duPont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:40 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Myerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr. Rohatyn left the meeting before its conclusion. The second meeting convened at 1:30 p.m. Present, in addition to myself, were Mr. Lasker, Chairman of the New York Stock Exchange, Mr. DeNunzio, Vice Chairman of the New York Stock Exchange, Mr. Haaek, President of the New York Stock Exchange, and a Mr. Brandow who, I believe, was their counsel. Mr. Rohatyn joined the meeting at 1:40; Mr. Perot, Mr. Myerson, and Mr. Martin, who I believe, was Mr. Perot's counsel, joined at 2:10, and Mr. Flanigan at 2:30. My records show that my next appointment that day was with an official of the Department at 3:04. It is my recollection that all participants in the second meeting left my office together.

Are we reading the "Nightmare Decade" all over again? Is that what we are reading in the way that this has been presented to the public, Mr. Chairman? Because, if this is what we are reading, I might suggest I have read a lot in the columns and say maybe we had better get with it and investigate what is going on. I can only say to the press, at least some of them who are covering these hearings, maybe they had better get on the ball and maybe they had better be subject to something. They have been talking about their first amendment rights and we have been hearing in these hearings about the first amendment rights. Well, who is being destroyed in these hearings, Mr. Chairman, on innuendo and hearsay of the rankest and the worst order. What I have seen in these newspapers, in 1 days' time, ought to be enough to frighten the American people.

Thank you, Mr. Chairman.

Senator FONG. Would the Senator yield?

Senator Cook. I yield.

Senator FONG. I notice also that in both this morning's Washington Post and New York Times the captions on the articles relative to this hearing give you a very false impression. These headlines seem to give an impression that there is guilt by association—that the Attorney General, or I should say, Mr. Mitchell admits—but to be precise, do you have the front page of these two morning papers?

Senator Cook. This is the Washington Post article and this is the New York Times.

Senator FONG. The New York Times says—

The CHAIRMAN. Let us have order.

Senator FONG. "Mitchell recalls trust policy talk with ITT Chief," that is the New York Times headline. The Washington Post proclaims: "Mitchell testifies he met ITT Chief". Those are the headlines. They seem to suggest that there is guilt by association here; they lead the readers to assume there was something sinister or improper about these meetings, whereas the thrust of Mitchell's testimony was to deny very definitely the allegations of Mrs. Dita

Beard's memorandum connecting him with the ITT antitrust case settlement and the GOP convention—that, I suggest, is not reflected in these headlines.

This morning, I was having a haircut in the barber shop. I picked up the New York Daily News, a so-called tabloid. Yet, you can see that the New York Daily News has a caption on its article which really tells you what is happening here. That headline states that Mitchell denies emphatically that he ever had anything to do with ITT. It reads: "Mitchell is adamant in denying any deal with ITT." Now, when you read these three headlines you begin to see where the prejudice is and how prejudiced some newspapers are against what is going on here. I hope that the reporters and headline writers will be a little more objective in the future handling of these vitally important hearings. Up to now, even when the articles written are objective, some of the headlines are very nonobjective.

Senator KENNEDY. Mr. Chairman, I don't think any of us hold any briefs for mistakes that are made in the newspapers. As I understand the New York Times has—the New York Times in its later editions made the changes to insure that both the pictures and the stories were accurate. But I think we do a disservice to the members of the press when we don't realize that this is an extraordinarily complex and involved situation. I think they have done an extraordinary service to the people of the United States in reporting this case over the period of the last 3 weeks, and I feel that the American people have been served by their efforts in trying to follow what, I think, all of us have felt has been an enormously involved, complex situation. So while I would certainly agree with the Senator from Kentucky that where there have been misrepresentations and inaccuracies that there is a responsibility to correct them, and I believe that the news journalists and the newspapers who have been accused of such have certainly a reputation for doing so, I, for one, believe that on any review their reporting of these hearings has been accurate and fair. So I think that my friends from Kentucky and Hawaii have made their comments, and I think some of us have a different view on the situation.

The CHAIRMAN. Whose time is it?

Senator KENNEDY. As I remember, yesterday it was over there, Mr. Chairman.

The CHAIRMAN. Do you have questions?

Senator HRUSKA. A brief comment in line with what has already been said. I agree with what Senator Kennedy says; I think the press does deserve a lot of credit for bringing the story and these accounts to the American public. That does not excuse them from what they, themselves, some of them, visit upon others.

The date of 1971, for example, had it been uttered by a witness who was in disrepute, and the object of biased reporting, would have been called a liar; that is what happened with Mr. Kleindienst because he remembered some things after going through the history of the case over 2½ years which he didn't refer to initially, so he was called a liar.

One of the journalists who testified here when attention was called to inaccurate and untrue and totally false stories said, "Well, it was an honest mistake."

So the Mardian picture mislabeled, and the 1971 date, are corrected with an apology; that is fine. But there is no one who will stand up and

say, "You are a liar" because you put 1971 there instead of 1970, "You are a liar" because you mislabeled the picture of the man who was on the front page of a great newspaper. It is that which sometimes causes the public to wonder whether there is that responsibility that goes with the privileges and immunities of the press, privileges that are guaranteed by the Constitution, just as all of us have our privileges. But we should also bear in mind some responsibility. I won't go into the matter of calling anyone who makes an honest mistake a liar, but I would suggest that maybe others should bear that in mind, too.

Senator COOK. I wonder if the witness would care to have any comment to make on this, Mr. Chairman?

TESTIMONY OF JOHN N. MITCHELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES—Resumed

Mr. MITCHELL. Senator, I would subscribe to what you have said this morning and I would also make reference to the fact that when Dean Griswold was here to testify he pointed out that the newspapers had been—with reference to the termination of the antitrust suit—they had referred by the use of the word "abandoned" and other such descriptions, when actually it was a court-settled decree, as the Senator from Kentucky pointed out yesterday, and I think Dean Griswold put it in proper context when he pointed out that the termination of the litigation involving ITT and its subsidiaries was about the same as the defendant pleading guilty, and I thought he well characterized the misunderstanding that the press had of the nature of the proceedings for the settlement of the antitrust litigation.

I would also like to point out, as I said yesterday, that there are a number of good people who have been involved in these hearings who have been slandered by the reports that have appeared in the press; and I only hope that in some way that the American public can learn that Richard Kleindienst and Judge McLaren are two of the most—and Dean Griswold—three of the most able, honorable, competent people who exist in this country.

Senator COOK. Mr. Chairman, may I add to the remarks that we are making this morning that—

Senator KENNEDY. Would the Senator just yield on this last point?

Senator COOK. I just merely wanted to say that I have since learned that—I hate to get anybody into trouble—but I have since learned that the UPI that sent the picture out notified all of its subscribers at 3 o'clock yesterday afternoon that the cutline on the picture that it had sent out was in error. Now it would seem to me that if newspapers throughout the United States were notified at 3 o'clock in the afternoon that a cutline on a picture was in error, that newspapers ought to have more than abundant time in which to make that change. I really wanted to get that into the record because I think that it is of some significance.

Senator KENNEDY. Mentioning, as Mr. Mitchell has, reports of the three gentlemen that he mentioned, I suppose you would also have to include Mrs. Beard, who has been pretty well battered around, too, in these hearings; and her reputation has been certainly damaged, and there has been a pretty good job done on her by witnesses as well.

I don't think any of us are trying to look at who has been tarnished more. Obviously, that is not the purpose of any of the hearings but

I think when we are considering the implications, ramifications of the whole set of hearings, I think she has probably undergone about as much vilification as anybody else.

The CHAIRMAN. Yes; from witnesses, on proof on that stand.

Senator KENNEDY. Could I continue without interruption, please?

The CHAIRMAN. Yes.

Senator KENNEDY. And I think that her name ought to be brought into the hearing in terms of fairness as well.

Senator Cook. Mr. Chairman, I might, for the benefit of the record, remind the committee that it was this Senator who put the Virginia statute in the record who said he didn't know the propriety of asking a particular witness, Dr. Liska, questions that pertained to a patient-doctor relationship that started all of this.

The CHAIRMAN. Yes; her own doctor, sent here by her consent. The other witness was a former Governor of a State who told what happened in the Governor's mansion. It wasn't by any innuendo; it was sworn testimony from that table there.

I am going to recognize Birch. He has not had a chance to ask questions.

Senator BAYH. Mr. Chairman, I appreciate that courtesy. I would just as soon listen to the dialog that is going on.

The CHAIRMAN. Go ahead and ask your questions. [Laughter.]

Senator KENNEDY. Good morning, Mr. Mitchell. [Laughter.]

Yesterday, I raised—

Mr. MITCHELL. It is nice to see you again. [Laughter.]

Senator KENNEDY. It has been so long. [Laughter.]

Senator KENNEDY. Are we following the 10-minute rule, Mr. Chairman, so we understand?

The CHAIRMAN. I have been liberal with you on the 10 minute rule.

Senator KENNEDY. I know that. I want to know when that ax is going to fall. OK?

Senator Cook. Any week now.

Senator KENNEDY. I raised yesterday the number of the anti-conglomerate cases in 1970 with you, Mr. Mitchell, and I would like to read Mr. McLaren's testimony before the Antitrust Subcommittee on February 18, 1970, very briefly. These are excerpts of that testimony:

The approach outlined in my testimony, last March guided our conglomerate merger activity during 1969. In that year, the Antitrust Division filed five principal suits challenging major conglomerate acquisitions.

"The first of these cases, filed in April 1969, challenged the acquisition by Ling-Temco-Vought of Jones & Laughlin Steel Corp. . . .

The second of our five conglomerate merger cases, also filed in April 1969, challenged the acquisition of the Canteen Corp. by International Telephone & Telegraph Corp. . . .

The third conglomerate merger case, filed May 1969, involved the proposed acquisition of B. F. Goodrich Co. by Northwest Industries. . . .

The fourth and fifth of our conglomerate merger cases, both filed in August 1969, involved additional acquisitions by ITT; the Hartford Fire Insurance Co. . . . and the Grinnell Corp. . . .

So there were five anticonglomerate cases being actively pursued. Of course, one of these, of the five, the LTV case, was settled June 10, 1970.

And let me read what Mr. McLaren said about, that from the Washington Star of June 11:

McLaren was not disturbed over lack of a Supreme Court test. "We have of course, four other cases that are continuing and will ultimately reach the Supreme Court, I expect," he added.

Now, of the four cases, three of those were against ITT. So the plain fact is, when Mr. Geneen came to talk to you about the antitrust policy, three of the cases in which the Justice Department was involved in dealt with cases that he had a very direct interest in.

I am interested in what distinction you make between discussing three cases and discussing a policy currently affecting only three cases and one other?

Mr. MITCHELL. Well, let me point out, Senator, that the LTV case had just prior thereto been settled which was settled on the basis of divestiture which established the policy, as well as the pendency of the other cases and it was that general policy that was discussed at that meeting.

I believe that you will find if you go on further after that date of February, did you say——

Senator KENNEDY. Yes.

Mr. MITCHELL. In 1970, there are other cases that could fall into that category.

Senator KENNEDY. June 7?

Mr. MITCHELL. I thought you were reading from Mr. McLaren's testimony of February?

Senator KENNEDY. His comment was in June 1970, the one in which he indicated, "We have . . . four other cases that are continuing and will ultimately reach the Supreme Court, I expect." And I suppose if there are four other cases, three of which are ITT, where Mr. Geneen is coming down to talk to you, if he talked about antitrust policy, about the implications of antitrust policy on that fourth case——

Mr. MITCHELL. Senator, he was talking about the antitrust policy of this administration from the general point of view and also with respect to, I am sure, he had in mind the potential for additional acquisitions along the line, and that was why he was interested in the administration's antitrust policy in this area.

Senator KENNEDY. But certainly weren't the major elements of discussion in terms of antitrust policy by Mr. Geneen essentially the same issues which were included in the ITT cases?

Mr. MITCHELL. Not so far as our conversation was concerned. As I related them yesterday, they had to do with his contention that our antitrust policy was based on bigness, and as I pointed out yesterday, I assured him that that was not the case, that our antitrust policy was based on anticompetitive practices. That was the nature of our conversation.

Senator KENNEDY. And those were the essential aspects, the anticompetitive practices that were involved in the ITT cases?

Mr. MITCHELL. I presume they were. I have never read the complaints and don't know what the allegations are.

Senator KENNEDY. Now, just in terms of the completeness of the record, was the first time that you came in contact with Mr. Geneen on May 27, 1970?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. That is the first time you ever met Mr. Geneen?

Mr. MITCHELL. To the best of my recollection, that is the first time I ever laid eyes on the gentleman.

Senator KENNEDY. And on that occasion did you talk with Mr. Geneen just about antitrust policy?

Mr. MITCHELL. None whatsoever. It was a social event in the White House, in fact, a dinner with 45, as I recall, of the leading businessmen of the country; and I had no substantive conversation with Mr. Geneen at all.

Senator KENNEDY. The reason I ask is because given the Walsh letter and Mr. Geneen's own kind of statements, it would appear that on each occasion that was available they were talking to high administration officials. But as I understand it——

Mr. MITCHELL. Senator, I would point out again that was in May of 1970 that that dinner took place and it was in August of 1970 that I met with Mr. Geneen.

Senator KENNEDY. You didn't know him before, and you haven't had any contacts with Mr. Geneen other than the ones that you mentioned yesterday. Is that right? Those occasions?

Mr. MITCHELL. Those were the only two contacts that I ever had with Mr. Geneen until I bumped into him out in the hall here yesterday.

Senator KENNEDY. Were you aware, in your conversations with Mr. Geneen, that the people of ITT felt they were going to lose the case at all? Did you ever gather that impression from any of your discussions?

Mr. MITCHELL. I never discussed any of the pending litigation with Mr. Geneen but I wouldn't have the faintest idea of what his thoughts were.

Senator KENNEDY. Was the issue, going back again to your 35-minute discussion with Mr. Geneen, in terms of his feelings that the antitrust law should be made in Congress where hearings on the aspects of national interests would be held before new legislation was enacted?

Mr. MITCHELL. I think the basis of his conversation with me, Senator, was that the existing law did not authorize the bringing of litigation by the Antitrust Division on the basis of bigness. This was his argument.

Senator KENNEDY. And this—were you aware that this was the argument that they were making in their negotiations with the Antitrust Division as well?

Mr. MITCHELL. I had not the faintest idea that there were any negotiations going on in 1970 one way or the other.

Senator KENNEDY. Were you aware of any relationship between Mr. Geneen and the President?

Mr. MITCHELL. Was I aware of it?

Senator KENNEDY. Yes.

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or his relationship with C. Arnholt Smith? Did Mr. Geneen ever mention his name?

Mr. MITCHELL. No, sir; there would be no occasion for him to do so.

Senator KENNEDY. And you don't know whether Mr. Smith—do you know Mr. Smith?

Mr. MITCHELL. I know who Mr. Smith is.

Senator KENNEDY. Was he at that dinner in the White House?

Mr. MITCHELL. I don't know. I have the list here and I can check if you wish.

Senator KENNEDY. Can we have that list, Mr. Chirman, for the record?

Mr. MITCHELL. This, by the way, of course, is a list that is published in the paper.

Senator KENNEDY. It is published in the paper?

Mr. MITCHELL. Are you interested in the guests at that particular occasion?

Senator KENNEDY. Well, if Mr. Smith was there; I don't want to take the time. Is he on there?

Mr. MITCHELL. Solomon, Solway, Scott, Riskin—I would gather not if these are all alphabetical.

Senator KENNEDY. Mr. Geneen had indicated that he had touched base with a number of administration—high administration people about the antitrust policy and ITT interest in antitrust policy, as I gather from his statement; but do I gather from your testimony that none of the other administration officials spoke to you about these matters?

Mr. MITCHELL. That is correct, Senator. I so testified yesterday.

Senator KENNEDY. The only, as I understand, communication, then, between different agencies of the administration was in the Interagency Committee?

Mr. MITCHELL. No. No. I also testified yesterday that it was the policy of the Antitrust Division in many of these areas to check with the Council of Economic Advisers and the Treasury when they had a particular problem where they could use their expertise.

Senator KENNEDY. But you don't know of your own knowledge whether the ITT case, since I imagine these four of the anti-conglomerate cases were the principal thrust of the Antitrust Division, that they probably did discuss the—

Mr. MITCHELL. No, Senator, the conglomerate cases were far from the thrust of the Antitrust Division. As you know, we had many, many other cases, of many different types.

Senator KENNEDY. But would you not agree that they were perhaps, from what we have heard here in testimony by McLaren, they could very well be the most significant in terms of economic impact?

Mr. MITCHELL. I believe that in terms of economic impact—

Senator KENNEDY. Balance of payments, ripple effects?

Mr. MITCHELL. All of those different factors, plus the fact that it was a new concept that was being put forward by Mr. McLaren in connection with the enforcement of the antitrust policy, that they did have considerable significance.

Senator KENNEDY. So there is certainly the possibility that communications between the—took place between the administration officials, I suppose—

Mr. MITCHELL. Senator, I would point out that I testified yesterday that early in the administration there had been meetings department-wide in which this question of the acquisition of corporations by conglomerate was discussed at some length because it was having a substantial bearing upon the then economic conditions.

Senator KENNEDY. As I understand it, that was a continuing review, was it not, under that Interagency Committee?

Mr. MITCHELL. No, Senator—

Senator KENNEDY. I raise the Interagency Committee because it was raised by Mr. McLaren during the course of his interrogation.

Mr. MITCHELL. Let me point out that the question of conglomerate mergers, as I said, came on very early. It was reviewed basically by

the parties of interest, Council of Economic Advisers, the Treasury, et cetera. The Interagency Committee addressed itself to the total picture of the antitrust laws.

Senator KENNEDY. If we could move quickly—did you ever speak with Mr. Gerrity? His name has come up.

Mr. MITCHELL. I don't know Mr. Gerrity.

Senator KENNEDY. You don't know Mr. Merriam?

Mr. MITCHELL. Not until I saw my picture with him in the New York Times, no, sir. I have never met Mr. Merriam in my life.

Senator KENNEDY. That picture was with Mr. Mardian?

Mr. MITCHELL. Mardian.

Senator KENNEDY. What position does he hold now?

Mr. MITCHELL. As far as I know, and I believe it is correct, he is an Assistant Attorney General in the Department of Justice.

Senator KENNEDY. In the Justice Department?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. Mr. Ryan—if you know him?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or Mr. Aibel?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Mr. Walsh?

Mr. MITCHELL. Excuse me. I met Mr. Aibel for the first time in the hall yesterday.

Senator KENNEDY. Mr. Walsh; you know him?

Mr. MITCHELL. Judge Walsh, of New York, yes; I have known Judge Walsh for a considerable number of years.

Senator KENNEDY. Have you ever discussed antitrust policy with Mr. Walsh?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Mr. Horner?

Mr. MITCHELL. I don't even recognize the name, Senator.

Senator KENNEDY. And Mr. Goodrich?

Mr. MITCHELL. No, sir; I don't know Mr. Goodrich.

Senator SCOTT. That is Little Jack Horner? [Laughter.]

Senator KENNEDY. Mr. Walsh's letter to Mr. Kleindienst says, "Ordinarily I would have first seen Dick McLaren, but I understand that you, as Acting Attorney General, have already been consulted with respect to the ITT problem * * *." You don't have any idea, then, who consulted with Mr. Kleindienst to such an extent that it was clear that Mr. Kleindienst and not Mr. McLaren was the person to talk to?

Mr. MITCHELL. I haven't the faintest idea, Senator, where any such statement might have been derived from.

Senator KENNEDY. And you—did you ever have an opportunity to talk to Mr. Kleindienst about the kind of issues that Mr. Geneen had mentioned to you?

Mr. MITCHELL. I had all the opportunity in the world, Senator, but I never did.

Senator KENNEDY. Just even in the broad antitrust aspects?

Mr. MITCHELL. No, sir; I testified yesterday that I did not discuss Mr. Geneen's presence or our conversation with anybody in the Department.

Senator KENNEDY. What about the issues that he raised?

Mr. MITCHELL. Nor the issues. You see it would have been entirely nonproductive because I advised him as to what the policy of the Department was and it continued to be the policy and there was no attempt to change it.

Senator KENNEDY. And it was—and I think you commented yesterday that you felt there was no reason to include either Mr. McLaren or Mr. Kleindienst in these discussions?

Mr. MITCHELL. Absolutely not, due to the basis of the terms set out with respect to Mr. Geneen's conversation with me.

Senator KENNEDY. Did you know or know of Mr. Rohatyn before April 29, 1971?

Mr. MITCHELL. I believe I knew of him when I was practicing law in New York. I don't recall ever having met him other than perhaps casually.

Senator KENNEDY. But you didn't know his position as either a director or—

Mr. MITCHELL. No, sir; I did not.

Senator KENNEDY (continuing). Or a close friend of Mr. Geneen?

Mr. MITCHELL. I did not.

Senator KENNEDY. Did you know that he had met with Mr. Kleindienst on April 20?

Mr. MITCHELL. I knew that Mr. Geneen—Mr. Rohatyn left that morning meeting saying that he was going down to meet with Mr. Kleindienst and Mr. McLaren and that was the excuse that he gave for leaving the meeting that we had in the Department.

Senator KENNEDY. Was there anything else to that conversation? I mean, was that the extent of it?

Mr. MITCHELL. That was the extent of his excuse as to why he had to leave that ongoing meeting.

Senator KENNEDY. Did he say what the subject matter was that he was going to—

Mr. MITCHELL. No, sir; he did not.

Senator KENNEDY. You did not know what the subject matter was?

Mr. MITCHELL. I had no idea what it was.

Senator KENNEDY. Did you know that he was meeting with Mr. Kleindienst, McLaren, and others on April 29?

Mr. MITCHELL. I just testified, Senator that he—

Senator KENNEDY. April 20. Excuse me.

Mr. MITCHELL. April 29. He excused himself from that morning meeting saying he had a meeting with Mr. Kleindienst and Mr. McLaren.

Senator KENNEDY. He had the previous meeting on the 20th. The 29th meeting, as I understand, was the general meeting, but he had had an individual meeting with Mr. Kleindienst on the 20th?

Mr. MITCHELL. I am sure he has never mentioned such a fact to me.

Senator KENNEDY. You had had, as I understand, two meetings with Mr. Rohatyn in September of 1971 and November of 1971?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. Could you tell us very briefly what those were?

Mr. MITCHELL. The same subject matter in the two meetings of April 29. They had to do with participation of Mr. Ross Perot in the DuPont firm, and the financial problems that they were having and the obligations of the New York Stock Exchange with respect thereto.

Senator KENNEDY. You never had an opportunity to talk with him about antitrust policy?

Mr. MITCHELL. I had all the opportunity in the world, Senator, but I had no reason to and did not.

Senator KENNEDY. At those meetings did you understand he was a director of ITT?

Mr. MITCHELL. Not to my knowledge at that particular time, sir.

Senator KENNEDY. As you mentioned here, you were talking about the brokerage firms, on problems of Ross Perot's brokerage firm; is that right?

Mr. MITCHELL. It is not the Ross Perot brokerage firm. Mr. Perot put some money into the DuPont firm and that is the subject matter of those particular meetings that we discussed.

Senator KENNEDY. Did you serve on the board of directors with Mr. Perot? Did you serve on it?

Mr. MITCHELL. Board of directors of what, sir?

Senator SCOTT. Anything; anything at all. [Laughter.]

Mr. MITCHELL. No, sir; I have never served, to my knowledge, on a board of directors of anything with Mr. Perot.

Senator KENNEDY. Are you a fellow director of the Nixon foundation with Mr. Perot?

Mr. MITCHELL. I really don't know. I couldn't tell you who are members of the Nixon foundation.

Senator KENNEDY. You are a director?

Mr. MITCHELL. I would believe that to be the case, although I don't recall ever having attended a meeting, if they have ever had one.

Senator KENNEDY. Was Mr. Perot ever a client of yours?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or your firm?

Mr. MITCHELL. Not to my knowledge, and I doubt that would be the case without my knowledge.

Senator SCOTT. Mr. Chairman, could I inquire whether the Senator from Massachusetts has a watch?

Senator KENNEDY. Yes.

Senator SCOTT. Or a view of the clock?

The CHAIRMAN. I am responsible for that. There are no questions on your side.

Senator SCOTT. I have some questions.

The CHAIRMAN. You have some questions?

Senator SCOTT. Yes.

The CHAIRMAN. All right.

Senator SCOTT. Mr. Attorney General, I want to pursue a further avenue of irrelevancy. [Laughter.]

Since we are being irresponsibly irrelevant here, I just want to read into the record a synopsis of the Anheuser-Busch controversy of 1966 which is a refreshing note:

Busch family, plus Anheuser-Busch executives, contributed total of \$10,000 to the President's (Johnson) Club in 1966.

(a) An antitrust action against Anheuser-Busch had been pending since 1962, to force Anheuser-Busch to divest the Rahr Malting Co. of Manitowoc, Wis. Rahr was one of the major suppliers of malt to the brewing industry. Justice charged this acquisition would remove this source of supply from the rest of the industry and give Anheuser-Busch an unfair competitive advantage.

(b) In April, 1966, Anheuser-Busch lawyers suggested suit be dropped.

(c) Justice Department trial staff recommended against dropping suit on May 9, 1966.

(d) May 20, 1966, evaluation section of Justice recommended suit be dismissed.
 (e) May 24, 1966, Busch and family and executives made total \$10,000 contribution to President's Club.

(f) May 26-June 11, 1966, antitrust policy planning division, Assistant Attorney General Turner, and Attorney General Katzenbach all agree to dismissal and so announce on June 11, 1966.

We have a complete sequence including a contract for a veterans' hospital in San Diego awarded to a heavy contributor, Mr. Martin, to the President's club.

The CHAIRMAN. What President?

Senator SCOTT. President Johnson's club. I said this was irrelevant, Mr. Chairman. [Laughter.]

Senator SCOTT. The Busch family organized a fund-raising dinner for President Kennedy, raising an estimated \$100,000 in St. Louis and also made further contributions in 1964 to the Johnson campaign. The architect who got the San Diego job—no case is complete without San Diego these days—for the A.C. & U. Edward Martin Architectural Engineering Firm of Los Angeles, large contracts for VA facilities—they made a \$12,000 contribution.

First of all, I am going to ask that a statement put into the Congressional Record of July 20, 1966, by Mr. Goodell and others, including the column by Mr. Clark Mollenhoff, be made a part of the record by reference and that the typed memorandum be included in the record.

(The typed memorandum dated Mar. 15, 1972 follows:)

UNITED STATES SENATE,
 REPUBLICAN POLICY COMMITTEE,
 March 15, 1972.

MEMORANDUM

To the Hon. Hugh Scott.

Subject Synopsis of Anheuser-Busch, et al. controversies in 1966.

1. Busch family, plus Anheuser-Busch executives, contributed total of \$10,000 to the President's (Johnson) Club in 1966.

(a) An antitrust action against Anheuser-Busch had been pending since 1962, to force Anheuser-Busch to divest the Rahr Malting Co. of Manitowoc, Wis. Rahr was one of the major suppliers of malt to the brewing industry. Justice charged this acquisition would remove this source of supply from the rest of the industry and give Anheuser-Busch an unfair competitive advantage.

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(d) May 20, 1966, evaluation section of Justice recommended suit be dismissed.

(e) May 24, 1966, Busch, and family, and executives made total of \$10,000 contribution to President's Club.

(f) May 26-June 11, 1966, anti-trust policy planning division, Assistant Attorney General Turner, and Attorney General Katzenbach all agree to dismissal and so announce on June 11, 1966.

A more detailed sequence prepared by then Congressman Charles Goodell and inserted in the Congressional Record, July 20, 1966 is attached.

2. Comment: Katzenbach and Turner defended decision on grounds acquisition did not in any way threaten sources of supply of malt for rest of brewing industry, and that during whole period considerable excess capacity in malting industry existed.

Clark Mollenhoff column, attachment A, quoted Justice attorneys (lower level) as insisting that such acquisitions by the largest American brewery would further increase "oligopolistic tendencies" in both brewing and malting industries.

Representative Glenn Davis, R., Wis., attachment B, objected to decision because at same time Justice was initiating suits against Schlitz over its attempted acquisition of two breweries, and asking for dissolution of merger of Pabst and Blatz breweries in Wisconsin. All of these smaller than Anheuser-Busch.

Katzenbach replied that "horizontal" mergers (of competing breweries) would directly lessen competition nationally and in Wisconsin, while "vertical" merger of Anheuser-Busch and malting concern would not have this effect. See Davis-Katzenbach correspondence attached, attachment B.

3. Comment: Busch and family were and are long-time Democrats (as are most brewers), and had contributed previously to Democratic candidates:

(a) Organized a fund-raising dinner for Kennedy in 1960, raising estimated \$100,000 in St. Louis.

(b) Also contributed money in 1964 to Johnson campaign.

4. Other examples cited, attachment 3, of large donations to President's Club by Texas and California firms which both before and after such contributions received fat Government contracts.

(a) Brown-Root and Mohole Project. (\$25,000 contribution)

(b) A.C. & J. Edward Martin Architectural Engineering firm of Los Angeles. Large contracts for VA facilities. (\$12,000 contribution.) Martin an officer of J. Birch Society in Cal. and sometime Republican.

(c) Charles Luckman Architectural Engineering firm of L.A., same contracts. (\$5,000.) Luckman a Democrat.

Senator SCOTT. Now, one question, Mr. Mitchell: There has been reference to the acquisition by ITT of a number of other corporations, I believe seven. How many of those corporations were acquired during the previous administration or administrations?

Mr. MITCHELL. Senator, I am sorry I don't have the faintest idea because I have, as Attorney General, disqualified myself from dealing with anything that related to ITT and I can't answer your question; I am sorry.

Senator SCOTT. We will put it in the record. I believe that there were five of the seven, maybe four, but I believe it is five of the seven were there; and I note that no action whatever was taken by the previous administration or by Mr. Turner, the Assistant Attorney General who is so critical now, looking toward divestiture of ITT. The greater number of these companies were acquired by them prior to the coming into responsibility of this administration; no divestiture ever took place under the two previous administrations of the other side; no comparable divestiture ever took place. No prior assistant attorney general in charge of antitrust was ever as active or as effective or as successful as Judge McLaren.

Now, if we are going to indulge in irrelevancies, I am going to run wild, too, around here, and bring up a few more from time to time on Democratic contributions—by Democratic fat cats for Democratic contracts and Democratic favors in which the Justice Department appeared to be at the very least, acquiescent.

Thank you, Mr. Chairman.

Senator HRUSKA. Would the senator yield briefly?

Senator SCOTT. Yes.

Senator HRUSKA. Yesterday, Mr. Chairman, there was discussion with this witness of Mr. Flanigan and his knowledge of the case and his appearance, notwithstanding the executive privilege, and so on; almost at the same time there was going on, on the Senate floor, a colloquy and an exchange of views as to Mr. Flanigan and his place in this entire matter between Senator Eagleton of Missouri and Senator Cotton of New Hampshire. It has some relevant matter in it, some irrelevant matter, and on both scores it would qualify, and I ask that it be put in the record, the text of the colloquy, at this point.

The CHAIRMAN. It will be admitted.

(Excerpts from the Congressional Record, Mar. 14, 1972, follow:)

THE FLANIGAN FACTOR

Mr. EAGLETON. Mr. President, there is a "missing witness" in the ITT hearing—Mrs. Dita Beard.

But she is not the only missing witness.

There is one other, a man who works in the shadows—but only at the highest levels, only with the fattest cats.

That man is Peter Flanigan, called by Time magazine this week "Richard Nixon's 'Mr. Fixit' when it comes to powerful business interests."

The term "Mr. Fixit" can have a perfectly legitimate definition—that of a man skilled in making repairs.

I presume Time did not have that definition in mind when it applied the description to Mr. Flanigan.

For the evidence that has been mounting in the last few days—since his careful and smooth orchestrations suddenly became a cacophony as the press began delving into his affairs—shows Peter Flanigan to be no mere patcher of plaster, no apprentice applier of band-aids.

Rather, there is reason to believe that he is the mastermind, the possessor of the scuttling feet that are heard, faintly, retreating into the distance in the wake of a White House-ordered cave-in to some giant corporation.

Mrs. Beard's memo—and her testimony, whenever that might come—are important in the ITT hearing. More important is the propriety of ITT's donating \$400,000 to help stage the Republican National Convention right after the administration granted ITT a favorable settlement in its antitrust case.

But most important, it seems to me, is the element of the ITT case I would call the "Flanigan Factor"—or the place where Mr. Flanigan's fine hand appeared.

The ITT case is not the only one of its kind where Mr. Flanigan's presence can be traced. There are at least four more I am listing today, and undoubtedly there are others—many others.

But, one might ask, is it not Mr. Flanigan's job to represent the point of view of big business in the innermost councils of the White House, and is it not legitimate that the voice of big business be heard there?

The answer is yes—but only as long as being a conduit for the position of big business does not lead to becoming "Mr. Fixit."

And Mr. Flanigan, in the wake of mounting evidence that he is, indeed, "Mr. Fixit," should be called before the Judiciary Committee and be closely questioned about his role in the ITT case. And this Congress should be looking into his role in the other cases I will relate.

What was the Flanigan factor in the ITT case?

We know that Mr. Flanigan managed to get Richard W. McLaren, then Assistant Attorney General in charge of the Justice Department's Antitrust Division, to accept a report on the case from an outside consultant—really a young Flanigan protégé hired for the purpose, Richard J. Ramsden.

Richard J. Ramsden was an employee of Dillon, Reed from 1961 to 1965—the same investment banking firm of which Peter Flanigan was a senior vice president from 1954 to 1968. Ramsden was a White House Fellow from September 1969 through part of 1970—working for, guess who, Peter Flanigan. Later in 1970, he was a consultant to the Commerce Department. After that he wrote an antitrust analysis in regard to the Ling-Temco-Vought case which resulted in the settlement of that case by the Antitrust Division. And next came his ITT report.

We know that this report, in 15 pages which took only 2 days to write, somehow was so convincing that it provided the solution for a case the Antitrust Division had been building for years—a solution favorable, of course, to ITT.

Was there intervention? If so, was it improper? Only Mr. Flanigan can clear the air—air poisoned, to me, by a very distinct and unpleasant aroma.

There is a Flanigan factor in other vital decisions that affected big business. Here are some examples gathered so far:

ANACONDA CASE

Late in 1971 the Montana State Board of Health held hearings on proposed new Montana air pollution regulations. An employee of the Environmental Protection Agency—EPA—testified there in favor of stringent air pollution control.

The president of Anaconda, Mr. John Place, hit the ceiling over the testimony of the EPA employee and fired off a blistering letter to EPA Administrator William Ruckelshaus.

Without even giving Ruckleshaus a chance to respond, Place and other moguls of the copper industry sat down with Peter Flanigan in the White House and told him of their dissatisfaction.

Place acknowledged this meeting with his "Dear Peter" letter of December 29, 1971, in which he concluded:

Any assistance you can offer in having EPA acknowledge that it got over-zealously involved in Montana's affairs will be appreciated.

Flanigan contacted EPA and interceded on behalf of Anaconda. EPA then decided to disavow the testimony of its own employee. The disavowal letter was flown in person from Denver to Helena, Mont., this being the most tailormade air mail delivery for special interest service in modern history.

ARMCO STEEL CASE

In September 1971, the Environmental Protection Agency won a court order preventing Armco from dumping highly toxic chemicals into the Houston ship channel. EPA had taken the position that the wastes in question—cyanide, phenol ammonia, and sulphide—could be burned off. Armco complained of the additional cost and threatened to lay off over 300 workers.

Armco President William Verity—whose executives had contributed at least \$14,000 to the 1968 Nixon campaign—wrote to President Nixon complaining of the EPA suit. Enter the Flanigan factor.

According to House testimony, Peter Flanigan contacted EPA officials—who were told to "negotiate the case like any other," whatever that means. EPA and the Justice Department then entered into negotiations with Armco and reached an agreement whereby Armco could continue dumping its chemicals until the summer of 1972.

POSTAL SERVICE BONDS

In 1971 the newly restructured Postal Service announced its intention to issue \$250 million worth of bonds. The Postal Service decided:

First, to sell the bonds on Wall Street rather than selling them to the U.S. Treasury.

Second, not to take advantage of Federal guarantees—which parenthetically meant the price of the bonds would be higher.

Third, that underwriters to float the bonds on the market would be selected through negotiations rather than competitive bidding, and

Fourth, that one of the underwriters would be none other than Dillon, Read.

In his September 21, 1971, report to the chairman of the House Committee on Post Office and Civil Service, Representative MORRIS UDALL stated two principal conclusions:

(1) this important bond issue has been handled in such a way that the strong appearance of impropriety has arisen; and (2) that the method chosen for this financing may eventually and unnecessarily cost the taxpayers and the Postal Service large sums of money.

UDALL reported further:

"Peter Flanigan is a Special Assistant to the President and was formerly a Vice President of Dillon, Read and Company. There is ample evidence to indicate that the (sic) has been involved in discussions and meetings involving this issuance of the bonds by the Postal Service."

Add to this that the bond deal was negotiated by James Hargrove, senior assistant Postmaster General, formerly a vice president of Texas Eastern Transmission—whose own issues had been handled for years by Peter Flanigan for Dillon, Read.

It is hardly surprising, perhaps, that this cozy exercise in public-private high finance was enriched by the appointment of none other than Mudge, Rose, Guthrie, and Alexander as counsel to the underwriters—counsel doubtlessly enhanced by the fact that two former senior partners are President Richard Nixon and then Attorney General John Mitchell.

OIL IMPORTS

The present oil import quota system is estimated to cost consumers up to \$5 billion a year. The Treasury gets none of it; oil companies get it all. A Cabinet-level task force recommended in 1970 that the quota system be scrapped. Peter Flanigan is known to have shot down the original report and guided the work of a successor panel which brought in the opposite verdict.

Now in firm control of the oil import control system, Mr. Flanigan seems ready to embark on phase II. According to the Oil Daily, "orders have now gone down" to the Oil Policy Committee to report by April 1 on the import of new gas sources. The committee is expected to recommend "large scale imports of LNG—liquefied natural gas—and oil for SNG—substitute natural gas—to meet the increasing gas shortage."

Mr. Flanigan apparently finds no conflict of interest in the fact that Texas Eastern Transmission Corp., mentioned above, is planning a SNG facility which will require 125,000 barrels per day of imported naphtha. It has also applied for permission to import LNG from Algeria—on a temporary basis, thus far—to a terminal facility on Staten Island. Dillon, Read underwrote the first offering of Tetco common stock in 1947 when it was formed, and it has underwritten every one of Tetco's public debt issues since that time. TETCO has been Dillon, Read's creation and, to a large degree Peter Flanigan's. Now, in an oil market controlled by the White House, Peter Flanigan is in a position to insure the continued prosperity of his corporate ward.

And, of course, there was Sansinena case. But perhaps I am only suspicious. Perhaps the Flanigan factor is just coincidence—coincidence every time.

Peter Flanigan is the real missing witness. It is time that he was called to testify.

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the Senator from New Hampshire for 15 minutes.

PETER FLANIGAN

Mr. COTTON. Mr. President, I regret that I frequently find myself in the position of being compelled to speak in opposition to my friend from Missouri, with whom I have enjoyed a close and friendly relation since he has been in the Senate. I regret it especially, Mr. President, since I called his office because I heard what was going to be the subject of his 15-minute speech, and I tried to get in touch with him and I was unable to reach him by telephone and unable to get a return call from him. I regret especially that one for whom I have so much respect has approached this matter in quite the manner he has.

Peter Flanigan happens to be a personal friend of mine. I have had some dealings with him since he has been in the White House. I have not always agreed with him, particularly when New Englanders were communicating with him about oil.

I came to his defense in relation to the last matter that was touched upon by the Senator from Missouri, the so-called Sansinena case, and that defense was never answered. The Senator who then made that attack on Peter Flanigan on the floor of the Senate dropped the matter instantly and we heard no more about it, so no wonder the Senator from Missouri passed over that quickly.

Mr. President, I happen to know that Mr. Flanigan down at the White House is an old friend and acquaintance of the distinguished Senator from Missouri. I must say frankly that I am rather surprised that the Senator from Missouri would decide to make this attack on Mr. Flanigan at the White House and not inform Mr. Flanigan that he intended to do so; not ask one single question of Mr. Flanigan about whether his allegations are true or untrue, or listen to one word from Mr. Flanigan as to the truth or falsity of impressions which the Senator from Missouri, I am sure, quite sincerely entertains.

Mr. President, as was hinted by the Senator from Missouri, every administration in this country that I ever heard of, Democrat or Republican, has had to have experts assisting the President of the United States. President Nixon has his experts. He has his advisers on welfare, he has his advisers on ecology, and he has his advisers on every other subject. There never has been an administration in which it was not necessary for the President to have someone familiar with business in this country, with banking in this country, and the economic machinery that makes the backbone of this country and provides the taxes to support our Government. There never has been a President who has not needed someone well versed in those subjects. In this particular instance Mr. Flanigan happens to be one of those persons who advises the President on these subjects. Quite properly the President would want someone who had been successful himself and who had a thorough business background.

Now, Mr. President, most of what the Senator from Missouri has said has nothing more to do with the ITT situation which is before the Committee on the Judiciary and the question of the confirmation of Mr. Kleindienst as Attorney General of the United States than do the flowers that bloom in the springtime. What are the facts?

Well, the facts are that Mr. Richard Ramsden at some period some time ago served as a White House fellow and worked primarily with the Office of Eco-

conomic Opportunity. It so happens that later Judge McLaren, who then as Assistant Attorney General, was dealing with the LTV case, which has nothing to do with the present situation, nothing to do with ITT, and nothing to do with the fitness of the President's designate as Attorney General, asked Mr. Flanigan to recommend someone to do some research for him and answer some questions for him in relation to the LTV case. Mr. Flanigan suggested Richard Ramsden as a competent financial analyst then in the employ of the Government; Richard Ramsden did some research and he did the job well. In fact, he did the job so much to the satisfaction of then Assistant Attorney General McLaren, that he gained a good deal of confidence in the judgment of Mr. Ramsden.

So now, when the matter comes up and Judge McLaren is working on the ITT case and its settlement, Judge McLaren again calls Mr. Flanigan in the White House, and does he ask for someone to be recommended to him by Mr. Flanigan? No; he inquires about Richard Ramsden: "Where is he? Is he available, because he is the man I would like to have." This is the testimony.

Mr. Flanigan, knowing that Mr. Ramsden has returned to an investment management firm, which by the way was not Mr. Flanigan's old firm, informs Judge McLaren, and Judge McLaren is about to leave town and says to Mr. Flanigan: "Will you call him and propound these specific questions to him so that I may have his responses," and that Mr. Flanigan did.

Mr. President, to assert on the floor of the Senate without once approaching Peter Flanigan and even listening to the facts as he knows them or giving him the opportunity to inform the Senator from Missouri, and on these flimsy grounds to take 15 minutes to tell the press of this country that this man Flanigan is a sinister influence in the White House, and that he is involved in all kinds of manipulations, frankly smells to me of what years ago when I was first a Member of the Senate was called McCarthyism.

I refer to the making of attacks upon the character and integrity of a man who to date has not once had any valid charge made against him of any improper conduct whatsoever, in his duties personally, in his business life, and more particularly in his duties as adviser to the President.

The background of this whole matter was that Mr. McLaren had developed a respect for Mr. Flanigan's professional competence in financial matters during the course of their work together in Government, and in 1970 had asked him to recommend a financial analyst for the LTV merger. Mr. Flanigan was aware that Mr. Ramsden, a highly competent financial analyst, was serving as a White House fellow at the Office of Economic Opportunity and brought him to Mr. McLaren's attention, who asked for his detail to Justice for a financial analysis of the LTV merger.

That was when Judge McLaren, then Assistant Attorney General McLaren, formed an acquaintance with Mr. Ramsden, and he wanted Mr. Flanigan to contact Mr. Ramsden again to transmit the specific interrogatories, which request came not from Mr. Flanigan but from Mr. McLaren.

Mr. President, how much time do I have left?

The ACTING PRESIDENT pro tempore. The Senator has 5 minutes remaining.

Mr. COTTON. Mr. President, the Senator from Missouri has gone on to resurrect and read into the record several allegations that are completely immaterial to the matter in question.

The first of these allegations is that because of a visit from the presidents of Anaconda, Kennecott, and Phelps Dodge, Mr. Flanigan induced the Environmental Protection Agency to alter its position with regard to strict air pollution standards imposed by Montana.

The facts concerning this allegation are: State air pollution standards are a matter solely for decision by the State of Montana; Mr. Flanigan's only involvement was to agree to meet with copper company officials together with Richard Fairbanks, assistant to White House environmental specialist John Whitaker. Mr. Fairbanks passed on to EPA, the copper companies' request that testimony by an EPA official in Montana be clarified to bring it in line with previously announced EPA policy that States were free to choose their own way of meeting Federal requirements.

The further background is that the State of Montana had under consideration a requirement that copper smelters, in addition to meeting the strong Federal standards, should achieve a 90-percent reduction in emissions of sulfur oxides. The only EPA involvement was through expert testimony at hearings before the relevant State officials.

The decision on EPA's position in the Montana hearings was made at EPA, not at the White House. An EPA official, George Walsh, had testified in Montana on December 15, 1971.

The copper company executives, believing his testimony to be inconsistent with prior EPA policy, addressed a letter to EPA. Receiving no response; realizing Montana was about to come to a decision; hoping for clarification of the EPA position; and unable to reach EPA Administrator William Ruckelshaus, who was out of the city; the copper executives visited Mr. Flanigan on December 28, 1971, to ask that their question be answered. Mr. Flanigan referred this question to Mr. Fairbanks.

There is nothing more natural than that Mr. Flanigan, with his business background, should be acquainted with these people in the copper industry, and there is nothing improper about his directing their question to the proper people in the Government to provide the answer.

So much for that.

Next, we have a second allegation that Mr. Flanigan induced EPA, represented by the Justice Department, to agree to a 6-month delay in ending Armco's discharges of pollutants into the Houston Ship Channel because of a letter to the President from William Verity, president of Armco Steel.

The facts are as follows: The lawsuit was settled by EPA on advantageous terms, requiring the companies to install pollution control equipment on a tight timetable in accordance with EPA's requirements and at the same time preserving 300 jobs. On receipt of Mr. Verity's letter to the President, it was entirely proper for Mr. Flanigan, as a Presidential Assistant, to inform himself of the facts of the matter, and to insure that administration policy of protecting both the environment and jobs was being carried out. This he did by checking with John Quarles, general counsel of EPA, and with the Civil Division of the Department of Justice, which deferred to EPA on the policy question.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. COTTON. My time is expired. I recognize that the leadership—

Mr. MANSFIELD. Mr. President, if the Senator wants more time, I ask that the period for the transaction of routine morning business be laid before the Senate.

PETER FLANIGAN

Mr. COTTON. Mr. President, Armco was one of many companies that had been emptying wastes into the Houston ship channel for many years. EPA through the Justice Department, brought a landmark case against Armco under the 1899 Refuse Act to stop this practice and won it; as a result, Armco agreed to do, on a tight timetable, what EPA had wanted all along; namely, to incinerate the pollutants. This was a very advantageous settlement for all concerned, which both ended the pollution and preserved the 300 jobs while the required antipollution facilities were being installed.

Those were the facts. All this maze of information that has been dug up from somewhere, I repeat, has nothing to do with the present situation in hand—not only that, it provides no foundation in fact for criticism of Mr. Flanigan.

The third allegation, which deals with the matter of postal bonds, is that Mr. Flanigan obtained for Dillon, Read & Co., Inc., a position as one of the five managing underwriters for the first bond issue by the Postal Service.

The facts are Mr. Flanigan was in no way involved in the choice of Dillon, Read as an underwriter—a fact attested to by James Hargrove, Assistant Postmaster General for Postal Affairs, who had this responsibility. Mr. Flanigan had no financial or other connection with Dillon, Read at the time it was selected as an underwriter, nor was or is there any explicit or implicit understanding of any future connection. Thus, Mr. Flanigan could not have profited from the Postal Service's choice, and furthermore, he was in no way involved in it.

The further background of this matter is that Mr. Flanigan did coordinate within the administration the development of legislation to create a Federal finance bank to bring greater unity to the financing activities of the Federal Government. Because of this activity and his general financial expertise, he was consulted on the question whether the newly reorganized Postal Service should sell its bonds direct to the public or to the Treasury, which options are provided for under the Postal Service Act. Mr. Flanigan requested a memorandum from the Postal Service regarding its views on the matter, and made that memorandum available to Treasury Under Secretary Volcker.

In short, these matters are all duties this man is expected to perform. That is what he is down there for. They do not pick someone who is an ignoramus or one who has had no connection with business to advise the administration, to advise the Postal Service, to advise other branches of the Government, on matters of policy.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. COTTON. Mr. President, I ask to be recognized for 3 minutes in my own right.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from New Hampshire.

Mr. COTTON. Mr. President, I have only 3 minutes, and I want to place in the Record the rest of this prepared statement, which covers Texas Eastern Transmission Corp. and which goes into the tried matter of the *Sansinena* case, which was once again exhumed by the Senator from Missouri, and which contains a direct statement issued by Mr. Flanigan in 1970.

TEXAS EASTERN TRANSMISSION CORP.

With regard to the Teteo situation the background is as follows: There are currently before the Oil Policy Committee 22 applications for the importation of liquified natural gas or products for the production of natural gas. The total of these imports would equal in 1975 the amount of petroleum currently being imported by the United States. Clearly it is necessary that the national security implications of these imports be considered by the Government. In connection with Mr. Flanigan's responsibilities in the oil and gas area he has urged the Office of Emergency Preparedness to make such a study.

Texas Eastern Transmission Corp. is among the applicants. Mr. Flanigan did not own at the time his assets were put into a blind trust and never had owned any common stock or other securities of Texas Eastern Transmission Corp. In April 1969 Mr. Flanigan severed all connections with Dillon, Read & Co., Inc., among whose clients Texas Eastern was included.

"SANSINENA"

With regard to the release of the *Sansinena* episode, the allegation is that Mr. Flanigan, because of his ownership of shares of the Barracuda Corp., procured and profited from a waiver from the Jones Act by the Treasury Department for one of Barracuda's tankers, the *Sansinena*, permitting the *Sansinena* to engage in coastwise trade between points in the United States.

The facts are as follows: Mr. Flanigan was in no way involved in Treasury's decision. Second, he could in no way have profited from it because first, he had severed all ties with Barracuda when the waiver was granted, and second, the *Sansinena* was a long-term fixed price charter to Union Oil Co. and so its use in the coastwise trade would not affect its value to Barracuda, which could only have received its previously agreed-upon fixed rental regardless of the grant or denial of the waiver. Finally, all of these facts were fully set forth in a letter by Mr. Flanigan on May 22, 1970, to Chairmen MAGNUSON and LONG and have been totally available since that time to any Senator who cared to ascertain the facts.

Further background: First, Mr. Flanigan was in no way involved in Treasury's decision on March 2, 1970, to grant such a waiver.

Second. At the time of the Treasury action on March 2, Mr. Flanigan owned no Barracuda stock; he had severed all ties with the corporation; his financial affairs were being handled in a blind trust; moreover, the waiver for the *Sansinena* had no effect on the value of Barracuda stock since the *Sansinena* was chartered at a fixed price to the Union Oil Co. Mr. Flanigan had acquired 308 shares of Barracuda in 1956, representing less than 4 percent of its equity ownership. He served as a director and as president of Barracuda until April 1, 1969, when he resigned because he was joining Government service. The 308 shares of stock were placed in a blind trust. The shares were sold by the trustee on February 25, 1970, at a price determined by a formula used in 1966. This sale occurred before the Treasury action; the price was calculated in a way which was entirely unrelated to any such action; and since the *Sansinena* was on a long term fixed price charter, the possibility it might be used in coastwise trade was irrelevant to the value of the Barracuda shares to its stockholders in any event.

Further, Mr. Flanigan said at the time the charges were made:

"I took no part in any way, directly or indirectly, in anything relating to the Treasury's granting of a waiver from the prohibition of the Jones Act to permit the tanker *Sansinena* to engage in the U.S. coastal trade. Nothing in the memorandum of October 9, 1969, from Maritime Administrator Andrew Gibson to me, to which Senator Tydings refers, or in the circumstances leading up to it, in any way contradicts that."

He covered the rest of these points in a letter sent at the time to concerned committee chairmen. I ask unanimous consent to have once again this statement printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY PETER M. FLANIGAN

I took no part in any way, directly or indirectly, in anything relating to the Treasury's granting of a waiver from the prohibition of the Jones Act to permit the tanker Sansinena to engage in the U.S. coastal trade. Nothing in the memorandum of October 9, 1969, from Maritime Administrator Andrew Gibson to me, to which Senator Tydings refers, or in the circumstances leading up to it, in any way contradicts that.

What happened was this: Prior to October 2, there had been discussion in the Cabinet Committee on Oil Import Policy of the means available to transport Alaskan crude oil from the North Slope to the continental United States. It was suggested that one company, having a refinery in the Virgin Islands (to which the Jones Act does not apply) was considering shipping crude oil in foreign flag ships to be refined there into products which foreign flag ships would then carry to the continental U.S. This possible threat to U.S. interests by inducing the construction outside the U.S., in either the Virgin Islands or Canada, of the refinery capacity required for Alaskan crude oil was of concern to me in my Presidential assignment with the Cabinet Committee mentioned above; and on October 2, I addressed a memorandum to Mr. Fanseen, Acting Chairman of the Maritime Commission, and to Mr. Gibson asking about this (copy attached).

On the following day I had a conference with Mr. Gibson on the Administration's maritime program. At the end of it, I mentioned to him my October 2 memorandum regarding this aspect of the Jones Act, which was then on its way to him, and asked the related question: what were the provisions of the Jones Act (with which I was not then as familiar as I am now) which prevented vessels like the Sansinena, built in American yards and registered under foreign flags, from returning to U.S. registry and engaging in the coastal trade. Mr. Gibson's memorandum of October 9, which quoted the relevant provisions of the law prohibiting this, was his reply to this oral inquiry.

At the time, I was aware of the failure of prior efforts to secure a waiver permitting the Sansinena to engage in coastal trade. I was not aware that another application for a waiver had been filed with the Treasury two months before, and did not become so until about the time the waiver was granted in March, 1970. My inquiry to Mr. Gibson was for information only, in the context I have described, which related to my official assignment for the President. It was not intended to produce, and did not in fact produce, any action by the Maritime Administration or the Commerce Department. Mr. Gibson confirms that his recollection and understanding of my inquiry are the same as mine.

Senator Tydings attempts also to find a significance that does not exist in minor changes that were made between the first and the final draft of the memorandum that I sent to Secretary Kennedy which was released by him on March 10, 1970. Apart from correcting an inaccuracy in the first draft (my financial statement, as is customary with members of the White House Staff was filed on the regular Civil Service form, but was filed with the Counsel to the President rather than with the Commission itself) the primary effect of the changes was to strengthen the points that I was making: that I had had nothing to do with the Sansinena waiver application, and in any event could not have profited in any way by the granting of it.

MR. COTTON. Mr. President, I think I can speak with some authority on the Sansinena case. It was handled in our committee, and it was the Senator from New Hampshire who took the floor and thrashed the matter out in connection with that case.

Mr. President, in the moment I have left, I merely want to say that if I have spoken harshly about the Senator from Missouri, I certainly wish to soften those remarks. I hold him in high esteem. But it is not like him, I prefer to believe, to make these wild charges without once inquiring from the man whom he was attacking on this floor about any of the facts, or giving him any opportunity to respond.

I think that it should be borne in mind, first, that all these skeletons or alleged skeletons dug up from the past by the Senator from Missouri are not relevant to the matter before the Committee on the Judiciary at this time, and second—

THE ACTING PRESIDENT pro tempore. The Senator's time has expired.

MR. BELLMON. Mr. President, I yield my 3 minutes to the Senator from New Hampshire.

MR. COTTON. I thank the Senator from Oklahoma. I shall not use but 1 minute of it.

Most of these extraneous matters are subject to complete explanation. The matter at hand is this: In what sinister way has this man, who has served for years in the White House and has a stainless reputation, performed improperly in regard to the ITT matter?

None. His minimal participation has been explained completely. It was at the request of McLaren, who wanted to get in touch again with the man whom he had used before. This is making the greatest mountain out of the smallest mole hill that I have ever had the opportunity to hear.

I think that all these things will be thrashed out where they should be thrashed out, before the Committee on the Judiciary, and I think that it would behoove Senators to reserve their judgment, particularly when it is obviously an attempt to reach into the White House and strike at the President of the United States, until they know exactly what they are talking about.

I have tried to answer as many of the allegations made by my distinguished colleague from Missouri against Mr. Flanigan as time would allow. I now make my complete, if perhaps occasionally repetitious, rebuttal to the various attacks.

COPPER SMELTERS

ALLEGATIONS

That because of a visit from the presidents of Anaconda, Kennecott, and Phelps Dodge, Flanigan induced the Environmental Protection Agency to alter its position with regard to strict air pollution standards imposed by Montana.

FACTS

State air pollution standards are a matter solely for decision by the State of Montana; Flanigan's only involvement was to agree to meet with copper company officials together with Richard Fairbanks, assistant to White House environmental specialist John Whitaker. Fairbanks passed on to EPA, the copper companies' request that testimony by an EPA official in Montana be clarified to bring it in line with previously announced EPA policy that states were free to choose their own way of meeting federal requirements.

BACKGROUND

The State of Montana had under consideration a requirement that copper smelters, in addition to meeting the strong federal standards, should achieve a 90% reduction in emissions of sulphur oxides. The only EPA involvement was through expert testimony at hearings before the relevant state officials.

The decision on EPA's position in the Montana hearings was made at EPA, not at the White House. An EPA official, George Walsh, had testified in Montana on December 15, 1971.

The copper company executives, believing his testimony to be inconsistent with previous EPA policy, addressed a letter to EPA. Receiving no response; realizing Montana was about to come to a decision; hoping for clarification of the EPA position; and unable to reach EPA Administrator William Ruckelshaus, who was out of the city; the copper executives visited Flanigan on December 28, 1971, to ask that their question be answered. Flanigan referred this question to EPA through Richard Fairbanks, assistant to the White House specialist on environmental matters, John Whitaker, EPA determined that Mr. Walsh's testimony should be clarified, and on January 6 John Green, a Regional Administrator of EPA, addressed a letter to Montana officials clarifying the testimony by indicating (1) that EPA had no official position on what the costs of imposing a 90% emissions reduction would be; (2) that a 90% reduction was not specifically required by the federal Clean Air Act; (3) that the states were free to impose a 90% reduction; and (4) that "significant reductions in emissions from smelters in Montana" will be required to meet the federal law. This letter reaffirmed the EPA position stated in Mr. Ruckelshaus' prior memorandum of November 12, 1971 that EPA would leave the method of meeting federal requirements, and any decision to go beyond them, entirely up to the states.

ARMCO; HOUSTON SHIP CHANNEL

ALLEGATION

That Flanigan induced EPA, represented by the Justice Department, to agree to a six month delay in ending Armco's discharges of cyanides and other

pollutants into the Houston Ship Channel because of a letter to the President from William Verity, President of Armeo Steel.

FACTS

The lawsuit was settled by EPA on advantageous terms, requiring the companies to install pollution control equipment on a tight timetable in accordance with EPA's request and at the same time preserving 300 jobs. On receipt of Verity's letter to the President, it was entirely proper for Flanigan, as a Presidential Assistant, to inform himself of the facts of the matter, and to ensure that Administration policy of protecting both the environment and jobs was being carried out, which he did by checking with Mr. John Quarles, General Counsel of EPA, and with the Civil Division of the Department of Justice, which deferred to EPA on the policy question.

BACKGROUND

1. The Administration is concerned with keeping people employed, as well as with ending pollution. If the delay referred to above had not been agreed to, 300 people would have lost their jobs, because part of the Armeo plant in Houston would have remained closed. Mr. Quarles, General Counsel of EPA, informed Mr. Flanigan that this was never EPA's objective; EPA wanted only to end pollution on a tight timetable and not to close the plant. This desired solution was negotiated between the lawyers of EPA, the Justice Department and Armeo.

Armeo is one of those many companies who have been emptying wastes into the Houston Ship Channel for many years. EPA, through the Justice Department brought a landmark case against Armeo under the 1899 Refuse Act to stop this practice and won it; as a result, Armeo agreed to do, on a tight timetable, what EPA had wanted all along—namely to incinerate the pollutants. This was a very advantageous settlement for all concerned, which both ended the pollution and preserved the 300 jobs while the required anti-pollution facilities were being installed.

POSTAL BONDS

ALLEGATIONS

That Flanigan obtained for Dillon, Read & Co., Inc. a position as one of the five managing underwriters for the first bond issue by the Postal Service.

FACTS

Flanigan was in no way involved in the choice of Dillon, Read as an underwriter—a fact attested to by James Hargrove, Assistant Postmaster General for Finance and Administration, who had this responsibility. Flanigan had no financial or other connection with Dillon, Read at the time it was selected as an underwriter, nor was or is there any explicit or implicit understanding of any future connection. Thus, Flanigan could not have profited from the Post Office's choice, even though he was in no way involved in it.

BACKGROUND

1. Flanigan was not involved in the Postal Service's choice of Dillon, Read as one of the five bankers for the bond issue.

Flanigan coordinated within the Administration the development of legislation to create a Federal Finance Bank to bring greater unity to the financing activities of the Federal Government. Because of this activity and his general financial expertise, he *was* consulted on the question whether the newly reorganized Postal Service should sell its bonds direct to the public or to the Treasury, which options are provided for under the Postal Service Act. Flanigan requested a memorandum from the Postal Service regarding its views on the matter, and made that memorandum available to Treasury Under Secretary Volcker.

As for the choice of the managing underwriters, this decision was made by the Postal Service alone. The only question put to Flanigan on this subject came when Mr. James Hargrove, Assistant Postmaster for Finance and Administration, called Flanigan, for whose financial expertise he had developed respect in previous associations in the private sector, to ask: (1) whether as a matter of sound practice a commercial bank should be included in the managing group and (2) whether Morgan Guaranty Bank would be a good choice. Flanigan replied in the affirmative to both questions. However, he did not learn of the actual decisions on these subjects on the underwriters until they were publicly announced by the Postal Service.

TEXAS EASTERN TRANSMISSION CORP.

There are currently before the Oil Policy Committee 22 applications for the importation of liquified natural gas or products for the production of natural gas. The total of these imports would equal in 1975 the amount of petroleum currently being imported by the United States. Clearly it is necessary that the national security implications of these imports be considered by the government. In connection with Mr. Flanigan's responsibilities in the oil and gas area he has urged the Office of Emergency Preparedness to make such a study.

Texas Eastern Transmission Corporation is among the applicants. Mr. Flanigan did not own at the time his assets were put into a blind trust and never had owned any common stock or other securities of Texas Eastern Transmission Corporation. In April 1969 Mr. Flanigan severed all connections with Dillon, Read & Co. Inc. among whose clients Texas Eastern was included.

"SANSINENA"

ALLEGATION

That Flanigan, because of his ownership of shares of the Barracuda Corporation, procured and profited from a waiver from the Jones Act by the Treasury Department for one of Barracuda's tankers, the Sansinena, permitting the Sansinena to engage in coastwise trade between points in the United States.

FACTS

Flanigan was in no way involved in Treasury's decision. Second, he could in no way have profited from it because (1) he had severed all ties with Barracuda when the waiver was granted, and (2) the Sansinena was on a long-term, *fixed price* charter to Union Oil Co. and so its use in the coastwise trade would not affect its value to Barracuda, which could only have received its previously agreed-upon fixed rental regardless of the grant or denial of the waiver. Finally, the facts were fully set forth in a letter by Flanigan on May 22, 1970 to Chairman Magnuson and Long and have been totally available since that time to any Senator who cared to ascertain the facts. (Attached)

BACKGROUND

1. Flanigan was in no way involved in Treasury's decision on March 2, 1970, to grant such a waiver.

2. At the time of the Treasury action on March 2, PMF owned no Barracuda stock; he had severed all ties with the corporation; his financial affairs were being handled in a blind trust; moreover, the waiver for the Sansinena had no effect on the value of Barracuda stock since the Sansinena was chartered at a fixed price to the Union Oil Company. PMF had acquired 308 shares of Barracuda in 1956, representing less than 4% of its equity ownership. He served as a director and as President of Barracuda until April 1, 1969, when he resigned because he was joining Government service. The 308 shares of stock were placed in a blind trust. The shares were sold by the trustee on February 25, 1970, at a price determined by a formula used in 1966. This sale occurred before the Treasury action; the price was calculated in a way which was entirely unrelated to any such action; and since the Sansinena was on a long-term fixed price charter, the possibility it might be used in coastwise trade was irrelevant to the value of the Barracuda shares to its stockholders in any event.

Mr. EAGLETON. Mr. President, I have a few brief remarks I should like to make in response to the statement of the distinguished senior Senator from New Hampshire. It is true that the Senator did call my office and did seek to reach me on the telephone. I was presiding at a hearing of the Air and Water Pollution Subcommittee, of which I am vice chairman, from 9:30 this morning until 20 minutes to 12, at which time I returned to my office to get copies of my speech and otherwise prepare for this presentation, and I did not return the Senator's call.

We both, I believe, have mutual respect and regard for each other, although on occasions we may disagree, as I am sure we do in this particular instance.

The Senator from New Hampshire made reference to the fact that Peter Flanigan is "my old friend and acquaintance." In the past 3 years, I have seen Peter Flanigan once and talked to him twice on the telephone; and in the preceding 40 years, I talked to Mr. Flanigan twice in person. One time I remember was at

Tampa, Fla., and I cannot recall when the other was. So three in-person meetings and two telephonic communications, I think, mean that my friendship with Peter Flanigan is highly overrated—as indeed I think his cleanliness—that of Peter Flanigan—is highly inflated.

What this boils down to, Mr. President, is, In what manner should Flanigan be contacted to give his side of the story? Through the Senator from New Hampshire here this morning, indirectly, Peter Flanigan has responded. But if, as the Senator from New Hampshire says, "These matters are all subject to clarification," there is an appropriate time and there is an appropriate place that this clarification should take place. I suggest, first, that Peter Flanigan should volunteer to come before the Senate Committee on the Judiciary to give his version of his intermeddling in the I.T. & T. case.

Once having done that, I assure Peter Flanigan that I will reconvene the Subcommittee on Air and Water Pollution of the Senate Public Works Committee, and will give him an opportunity to come before that subcommittee to explain his role in the Anaconda case and the Armco case.

Finally, I will intercede with the chairman of the Post Office and Civil Service Committee, the Senator from Wyoming (Mr. McGEE), that after those hearings before the Subcommittee of the Public Works Committee are concluded, his committee holds public hearings and give Peter Flanigan an opportunity to explain his role in the matter of the post office bonds.

That is the place for Flanigan to appear. That is the place for Flanigan to appear under oath, not indirectly through another Senator.

I do not retract my speech. I do not retract the charges that are made therein.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, I yield my 3 minutes to the Senator from Missouri.

Mr. EAGLETON. I thank the Senator from West Virginia.

Those charges stand, as far as I am concerned, un rebutted and unchallenged. There is a proper forum—indeed, there are a multitude of fori, if that be the plural of forum—where Peter Flanigan can come, raise his right hand and swear to tell the truth, the whole truth, and nothing but the truth, and lay before this Congress, and thus this Nation, what his role was in these various matters heretofore mentioned.

That is where it is binding. That is where it is on the line. And anything short of that, by taking refuge in executive privilege or some other too widely construed concept will at least convince me, as one citizen of the United States, that these are undenied and that they are true.

So the ball is now in Flanigan's court. He has the means to come before these appropriate committees—the Judiciary Committee on the ITT case, Public Works on both the Anaconda and Armco cases, and I am sure that Senator McGEE will invite him to appear before the Post Office and Civil Service Committee.

So the jury is out; and while they are deliberating on that verdict, I think this country is waiting for Mr. Flanigan to testify under oath.

Mr. President, I yield the floor.

Mr. SYMINGTON. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield the Senator such time as I have left from the time yielded me by the Senator from West Virginia.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Missouri (Mr. SYMINGTON).

Mr. SYMINGTON. Mr. President, I have listened with interest to the remarks of my able and distinguished colleague, and hope that in due course the lady who apparently was involved in some way in the ITT case, who is currently giving out statements from the hospital, will come before the Judiciary Committee when the time comes and her health justifies her testifying. Taking a deposition in a hospital room is one thing. But it would be well, when the time came, that she have the chance to answer the personal attacks that have been made upon her, and also the criticism she has received in this matter.

Mr. COTTON. Mr. President, I ask unanimous consent for 1 minute.

Mr. EAGLETON. I yield such time to the Senator from New Hampshire as I have remaining from the time yielded to me by the Senator from West Virginia.

Mr. COTTON. I merely want to respond to the closing remarks of the junior Senator from Missouri. They were quite revealing. They reveal the fact that he is not primarily interested in what may be brought out about Peter Flanigan with respect to the ITT matter. What he is very naturally interested in—we who have been in the Senate many years have seen this happen before, on both sides of the aisle—is, at the opening of this presidential campaign, the wild allegations that anybody can make on the floor of the Senate with impunity.

He wants a chance to break down the long established executive privilege and to go on a fishing expedition by three, four, or five committees searching into the White House, to try to find something with which to distract the attention of the American people from the constructive achievements of this administration. We shall not fall for that obvious kind of partisan political activity.

Mr. BENNETT subsequently said: Mr. President, earlier today the distinguished Senator from New Hampshire (Mr. COTTON) answered the speech of the Senator from Missouri (Mr. EAGLETON) regarding Mr. Peter Flanigan, a member of the President's White House staff.

I have known Mr. Flanigan for many years, and I wish to take this opportunity to associate myself with the remarks of the Senator from New Hampshire. I believe he has very clearly and carefully placed the matter in perspective.

Senator BAYH. Mr. Chairman, I would just like to hit a couple of areas. So much has been discussed already; some of it has been relevant and some of it has been irrelevant, I suppose, depending on who is making the assessments.

There has been some discussion about "appearances" in the newspapers. I think all of us have to suggest that if we want these hearings to conclude, and Mr. Kleindienst to be made the Attorney General—and I said I wanted to vote for him, and I wanted to have him be Attorney General without a cloud hanging over his head—that so far as "appearances" are concerned these hearings will determine whether or not there is such a cloud.

Mr. Attorney General, did you see anything——

Mr. MITCHELL. Senator, Mr. Mitchell.

Senator BAYH. Mr. Mitchell. I have heard that name. I was feeling that perhaps former Attorneys General like to be called Attorney General even after they leave, as some of our colleagues like to be called Senator even after they have been in retirement, either voluntarily or involuntarily.

Mr. MITCHELL. I would not want to be confused with the Acting Attorney General which I hope will soon be confirmed.

Senator BAYH. I hope we can resolve this problem quickly.

Well, Mr. Mitchell, do you see any reason why people might be concerned about appearances? As I recall the sequence of events, and correct me if I am wrong, you withdrew from consideration of the ITT case, made Deputy Attorney General Kleindienst the Acting Attorney General as far as that case was concerned because of your relationship, your former firm's relationship, with ITT. That is relatively accurate restatement of the facts?

Mr. MITCHELL. My former law firm, and that happened in April of 1969, Senator.

Senator BAYH. Right. I salute you for that disengagement.

Do you see any reason why people might be concerned about appearances if you subsequently talked with Mr. Geneen about general antitrust policy, Mr. Geneen being the president of ITT?

Mr. MITCHELL. I do not, Senator, because, as I think I mentioned yesterday, I believe that so long as you do not get into areas of conflict of interest that anybody—whether he be a corporate president or a civil rights leader or anybody else—can come in and talk to the top person in the Department.

Senator BAYH. I think that should always be the case. I just——

Mr. MITCHELL. That was the basis upon which, of course, I was acting.

Senator BAYH. Right. And I would not begin to suggest how you as the Attorney General should make that assessment, but now that

I look back on it I wonder if maybe it might not have appeared better if inasmuch as three out of the four cases that were presently pending dealt with ITT that this discussion of general policy might have better taken place with Mr. Kleindienst who was directly responsible for the ITT legal cases?

Mr. MITCHELL. No; I am responsible or was responsible for the policy of the Department and it involved more than the three or four or five or whatever cases you are trying to put into the factor here. It involved the whole policy of the Justice Department.

Senator BAYH. I understand that. There were four cases pending at that time; three of them were with ITT; is that correct? The policy on conglomerates was directly related to three cases as far as ITT is concerned; that is why I am concerned about appearances.

Mr. MITCHELL. ITT was the conglomerate which had three cases pending relating to the conglomerate issue.

Senator BAYH. I think that is probably what I was trying to say and you said it better than I.

Mr. MITCHELL. Thank you, sir.

Senator BAYH. Did Mr. Kleindienst ever mention the fact he had been having these negotiations with ITT?

Mr. MITCHELL. No, sir. Mr. Kleindienst never discussed anything relating to ITT for its litigation or negotiations or settlement.

Senator BAYH. Let me just move into a couple of other areas to try to get your thoughts as far as general Justice Department policy is concerned.

In the Antitrust Division, it was considered wise to consider the economic, the financial impact, the ripple effect of divestiture?

Mr. MITCHELL. Yes, sir. That was one of the reasons why I have mentioned here before that in connection with some of the activities of the Antitrust Division, Mr. McLaren, and I am sure part of his staff, from time to time consulted with such people as the Council of Economic Advisers, and the Treasury Department, and so forth, depending upon where the interests were.

Senator BAYH. Well, can you tell me, please, why it was necessary considering all of the in-house expertise that existed in Justice, in the Antitrust Division, and considering the availability of the experts that you referred to as well as the others, it was necessary to have Mr. Flanigan ask Mr. Ramsden to come in and prepare the report that was the basis for the final termination of this matter?

Mr. MITCHELL. Senator, I can't speak from the specifics of the case, but I can give you an answer based on my experience in the practice of law and from what I have read in the newspapers, and I think the difference has been brought forth in these hearings, from what I hear, quite frankly, and that is the difference between an economic consultant, adviser, or analyst, and a financial consultant or analyst.

As I understand it, the question that was presented to Mr. Ramsden, and which had been raised by ITT, was the financial impact upon ITT if Hartford was divested. That has nothing to do with the normal economic questions that are considered in the antitrust cases and anti-competitive nature. It had to do with a financial analysis of the divestiture of the insurance company from ITT and what effect it would have on the company, on the shareholders, on the stock market and on the economy; and that is a specialized field and I believe that Mr. McLaren testified up here that he did not have that expertise in the Antitrust Division. He had economists, not financial analysts.

Senator BAYH. Was there any reason to be concerned that, as I recall, the record would show, that McLaren, whom most of us will accept as an expert in that area, had to rely on Mr. Flanigan to bring in this kind of outside expertise, that he did not consult with him directly? Is there anything that we should be concerned about so far as the way this kind of expertise was secured?

Mr. MITCHELL. Well, if I understand the circumstances, Senator, and I am not sure that I did because I was not present at the hearings and was not involved in the transaction——

Senator BAYH. May I interrupt this long enough to suggest ——

The CHAIRMAN. Wait a minute. Let him answer the question.

Senator BAYH. Mr. Chairman, I don't want to interrupt or be discourteous, but I think I might be helpful in making the answer more relevant. Am I wrong in saying that Mr. Ramsden also prepared a similar report in the LTV case and, at that time, you were the Attorney General directly charged in this, so perhaps you can have a more passing interest in this than from the newspapers?

Mr. MITCHELL. I was just about to say, Senator——

Senator BAYH. Please do so.

Mr. MITCHELL (continuing). That Mr. McLaren had used Mr. Ramsden in connection with the LTV case for the exact same purpose and, therefore, as I understand the situation, it was a question of having Mr. McLaren find out where Mr. Ramsden was and requesting that Mr. Ramsden prepare the same type of financial analysis for the Hartford-ITT case that he did for the LTV case.

Senator BAYH. You don't share my concern then that instead of McLaren going directly to Ramsden or asking you, as Attorney General, or Mr. Kleindienst, to go to Ramsden, we have to go through the White House with Mr. Flanigan to secure the services of Mr. Ramsden?

Mr. MITCHELL. I have just explained that circumstance, Senator. I will go through it again.

Senator BAYH. I guess the answer would be no?

Mr. MITCHELL. I don't have that concern, not the slightest. It was a question of a conduit of obtaining some professional services.

Senator BAYH. One other area, and I appreciate your response. It is quite understandable why you would not be concerned about one kind of circumstance and somebody looking at the same set of circumstances would have a different concern.

Would you please just discuss very quickly again the Reinecke meeting? As I recall, you said yesterday that, really, the details of the convention were not discussed at that time.

Could you just hit that one more time for us, please?

Mr. MITCHELL. Senator, my records show, and my recollection conforms to the records, that I met twice with Lieutenant Governor Reinecke and his aide—I think his name was Gillenwaters—once in April and once in September. I also testified yesterday that those meetings were on the basis that the Lieutenant Governor had been appointed by Governor Reagan as to be the individual in State government to assist in bringing forth an economic betterment to the State and that Mr. Reinecke during those meetings, as I recall, those two meetings, discussed with me the location of the space shuttle in California, different types of aircraft contracts for the manufacturers in California and, as I also said, it is conceivable that he might have

talked about bringing the convention to California. I don't recall the discussion.

Senator BAYH. Perhaps you explained yesterday, but could you tell us again, why Mr. Reinecke, as a representative of the Governor of California, would approach you as Attorney General of the United States relative to these factors that you said were the sole subject of this conversation?

Mr. MITCHELL. As I said yesterday, I believe that Mr. Reinecke thought that I had some influence in the Government. [Laughter.]

Senator BAYH. I am sure that is the case.

Mr. MITCHELL. And I might say that Mr. Reinecke hasn't been the only one who has talked to me along these lines.

Senator BAYH. We are just trying to find out just how much influence, with all respect, and how it was used, and that is our cause for concern. I note here, Mr. Chairman, and then I will desist, knowing my time has expired—I note here excerpts from the confirmation hearings when you were seated about where you are now. In response to questions by our distinguished colleague from North Carolina, relative to the position and the influence that you might have in the administration, and the Senator's expressing, noting, that you had been the campaign manager of the President, your response was something like this: "Senator, I would hope that my activities of a political nature have ended with the campaign." This was back in 1969. "I might say that this was my first entry into political campaigning and I trust it will be my last, and with the termination of the campaign and henceforth my duties and functions will be related to the Justice Department and as a legal and not a political adviser to the President."

It sounds to me like Mr. Reinecke was seeking more than legal advice and counsel.

Mr. MITCHELL. Well, I think you have to distinguish, Senator, when you are dealing with a public body like the State of California—I don't put that in the view of political spectrum at all—I put that into a governmental spectrum and if I could comment further on my answer to the Senator from North Carolina, I would that I had been able to follow out that thought that I had at the time. Apparently it has not come to pass insofar as my future activities are concerned.

Senator BAYH. I certainly am not about to be critical of the fact that you once again accepted the responsibility which you proved in 1968 you had a significant amount of expertise, too much expertise for some of us.

Mr. MITCHELL. Senator, I might correct the record on that as long as we are talking about the subject matter. I never wake up in the morning that I don't read that I am the campaign director for the Committee to Reelect the President. I haven't even made application yet to the chairman of that committee for a job, and I am not sure whether he is going to give me one. [Laughter.]

Senator BAYH. I trust you are not losing too much sleep at night for fear he might turn you down. [Laughter.]

Mr. MITCHELL. I am just hoping that he would.

Senator BAYH. I will not comment on that, Mr. Chairman.

Thank you, Mr. Mitchell.

The CHAIRMAN. Senator Tunney?

Senator TUNNEY. Thank you very much, Mr. Chairman.

Good morning, Mr. Mitchell.

Mr. MITCHELL. Senator.

Senator TUNNEY. I was interested——

The CHAIRMAN. Wait a minute.

Have you got some questions?

Senator COOK. I just don't quite understand, Mr. Chairman. No, go ahead, Mr. Tunney. We will vote in about 5 minutes anyway; so, Senator, go right ahead.

Senator TUNNEY. If you want to——

Senator COOK. No; that is perfectly all right.

Senator TUNNEY. Mr. Mitchell, I think that all of us sitting on this panel want very much to get to the truth of what happened, and maybe we have heard the truth and because of obfuscation that has occurred as a result of failures of memories and conflicting statements we don't realize that we have heard the truth, but I hope that you understand that when we ask these questions, at least when I ask these questions, I am trying to remove what I consider to be some of the obfuscation, some of the mist, that surrounds the key facts in what hopefully will be a hearing to eliminate the cloud that exists over Mr. Kleindienst's appointment as Attorney General.

Now, with respect to some of the conflicting statements, I would like to just read to you a report that appeared in the San Diego Union of July 22, 1971, written by Mr. Larry Thomas, wherein he said:

Lieutenant Governor Reinecke reportedly was drawn into the convention lime-light during a Washington trip when Attorney General John Mitchell, acting on Mr. Nixon's orders, asked Mr. Reinecke to pursue convention possibilities with San Diego city and Republican officials.

That is July 22, 1971. That is a report that Mr. Reinecke met with you, and when you couple that with Mr. Reinecke's statement that he had, in fact, met with you, you can understand why some of us are confused about actually what happened.

I might add that Mr. Reinecke told me approximately 1 hour before he reversed his position that he had met with you in May and had discussed the convention and \$400,000 and was acting as a member of the Chamber of Commerce for California when he discussed this with you. Then an hour later he reversed his position.

Now I am curious to know, did you on March 3 of this year discuss with Mr. Reinecke on the telephone his meetings with you?

Mr. MITCHELL. No, sir; I certainly did not.

Senator TUNNEY. Did anyone from the Republican National Committee or from your office discuss it with Mr. Reinecke?

Mr. MITCHELL. Certainly nobody from my office. I have no idea what goes on at the Republican National Committee.

Senator TUNNEY. So you are not aware of any telephone calls that Mr. Reinecke may have made?

Mr. MITCHELL. None whatsoever.

Senator TUNNEY. Mr. Mitchell, with respect to Mr. Rohatyn, and his meeting with you on April 29, it seems clear that one of the reasons that Mr. Rohatyn had scheduled a meeting with you was to talk about the financial problems of the New York Stock Exchange and the DuPont Co.?

Mr. MITCHELL. Let me point out that Mr. Rohatyn was just a part of a much larger meeting. As you recall from the testimony yesterday, and I think it was in my written statement, there were any-

where from four, five or seven or eight people; it was two different meetings.

Senator TUNNEY. Was Mr. McLaren there?

Mr. MITCHELL. No, sir.

Senator TUNNEY. When Mr. Rohatyn was at that meeting, you indicated that he had in no way discussed the I.T. & T. situation?

Mr. MITCHELL. That is correct.

Senator TUNNEY. And you indicated that he told you, as he was leaving the meeting, that he had to go downstairs and talk to Mr. Kleindienst and to Mr. McLaren about I.T. & T.?

Mr. MITCHELL. As I recall the reason for—that he used to excuse himself from the meeting of this group, was that he had a meeting with Mr. Kleindienst and Mr. McLaren.

Senator TUNNEY. About the *I.T. & T.* case?

Mr. MITCHELL. No; he did not say what it was about.

Senator TUNNEY. Was there anything at the meeting that you had with Mr. Rohatyn in the discussion of the DuPont Co. and the discussion of the financial conditions on Wall Street at that time which you expressed an opinion on which you feel Mr. Rohatyn could have carried to his meeting with Mr. McLaren which would indicate to Mr. McLaren that you felt that there should be a settlement of the *I.T. & T.* case?

Mr. MITCHELL. Oh, absolutely not; they were completely divorced subject matters and completely unrelated. There would be no occasion or reason for it.

Senator TUNNEY. Except the problems of the New York Stock Market and the possible bankruptcy of DuPont were certainly factors in the Ramsden report, were they not?

Mr. MITCHELL. Well, let me—I don't know; I have never seen the Ramsden report so I can't speak to that; but let me point out to you, Senator, that by the end of April, 1971, which was the date of that meeting, the difficulties with the brokerage houses in New York had been substantially cleared up and that the one remaining problem was DuPont, to the best of my recollection, and it was DuPont's remaining problem because of the accounting practices that they had carried out in their back offices in the past so that this was a hangover from the earlier days of 1969 and 1970 when many of the other houses had problems.

Senator TUNNEY. So there was nothing in the discussion that you had with Mr. Rohatyn regarding the financial condition of the stock market or brokerage houses which he could have used in the meeting that he had with Mr. McLaren which would indicate that you felt there were serious financial problems in the stock market and, therefore, there ought to be a settlement of the *I.T. & T.* case to avoid—

Mr. MITCHELL. No; I think if you will check the record as of that date it was a sole problem of DuPont, that the others had gotten themselves straightened out. For instance, the other large house that had some problem was Goodbody and Co. that had been taken over by Merrill, Lynch and that took care of that one, and the rest of them had come back; so what we were really talking about, as I think I mentioned in my statement or my testimony yesterday, was the relationship between the New York Stock Exchange and DuPont which was a continuing one with respect to their obligation and how they were

going to work that out as they discovered additional shorts in their bookkeeping transaction.

Senator TUNNEY. Well, you must admit——

The CHAIRMAN. Wait a minute, now. There is a rolleall vote.

We will recess now and be in executive session of the committee in Senator Scott's office at 12:15.

Senator TUNNEY. Mr. Chairman, when do we come back to this meeting, at 2 p.m.?

Do we come back here at 2 o'clock?

The CHAIRMAN. Yes, sir. I want you at this executive session.

(Whereupon, at 11:45 a.m., the hearing was recessed, to reconvene at 2 p.m., this date.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Proceed. Senator Kennedy.

Senator KENNEDY. Mr. Mitchell, just one final point on the matters we were talking about this morning.

The Wall Street Journal of May 8, 1969, says that Ross Perot was, and I quote:

a long-time friend of the Attorney General, worked with him during the Nixon campaign and has used President Nixon's former law firm for personal matters.

Can you tell us whether Mr. Perot was ever a client of yours, to your knowledge or your law firm's, while you were in private practice?

TESTIMONY OF JOHN N. MITCHELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES—Resumed

Mr. MITCHELL. No, Senator, I don't believe that I met Mr. Perot more than casually up until——

The CHAIRMAN. That is the third time you have been asked that same question.

Mr. MITCHELL. Well, there is—excuse me, sir, Mr. Chairman, there is an additional factor here that the Senator has brought up, that I met him casually maybe two or three times during the year 1968, to the best of my recollection. As far as I know, there is no relationship between the former law firm with Mr. Ross Perot. I may be mistaken because it is a firm with 120–130 lawyers and it could conceivably be; but I would think that if there had been a gentleman of the notoriety of Mr. Ross Perot with all of the things that he has done and tried to do on behalf of our prisoners of war, and so forth, that I would have recognized the name.

Senator KENNEDY. We will move into another area, Mr. Mitchell, and that concerns the steps taken by you to disqualify yourself from cases in which your law firm and clients of your law firm had been a part.

Would you review for us what procedures were followed by you in the Department, and when that took place?

Mr. MITCHELL. Well, when we came into the Justice Department, Senator, we were required—the Attorney General, the Deputy Attorney General, and other lawyers who were in the capacity of Assistant Attorneys General, and so forth, to file a list of names in which there could come a conflict of interest if matters relating to the

individuals or parties on that list were involved. Included among those with respect to the lawyers were the names of their former clients, of themselves and their firms. The practices were generally, and should have been in all cases that where you did have such a corporation as ITT, that whether it be in the Antitrust or Civil Divisions or otherwise, that it be checked by that Division to see whether or not the Attorney General or whoever was going to handle the matter had this conflict of interest. That is the procedure that was normally followed.

Senator KENNEDY. When did that take place in the Department?

Mr. MITCHELL. I am not quite sure, Senator. I presume it was shortly after we came into office on January 20.

Senator KENNEDY. You followed that for your own particular firm's clients?

Mr. MITCHELL. Yes, sir. As I recall, I had the law firm prepare such a list for me, because I was not cognizant of all of the clients that the firm might have.

Senator KENNEDY. And you mentioned ITT was on that list?

Mr. MITCHELL. I am not sure it was ITT or the subsidiary of ITT that the firm represented.

Senator KENNEDY. And that was distributed to the different departments within the Justice Department?

Mr. MITCHELL. The different divisions, yes, sir.

Senator KENNEDY. Different divisions.

On April 7 there was a Department of Justice note that was sent to you by Mr. McLaren that said:

The attorneys for ITT are coming in to talk about the Canteen acquisition tomorrow (Tuesday) morning. I expect to tell them we are recommending suit, including a prompt motion for temporary restraining order, unless the merger is abandoned.

That was sent from Mr. McLaren to you. Do you know whether you ever received that?

Mr. MITCHELL. I would doubt it, Senator, because I was in Florida, according to my records, from April 4 through April 13 of 1969.

Senator KENNEDY. As I understand it, your executive assistant sent a note up to Mr. Kleindienst, "Re ITT-Canteen Corp. Merger"—that has been made a part of the record—on April 7, 1969, in which there is a description of the proposed civil antitrust complaint to prevent ITT from acquiring Canteen Corp., nationwide food service and vending company.

Then: "This looks like a good case under section 7 of the Clayton Act." And then as it goes down, the third paragraph starts off, "Canteen and ITT will also have the power to expand the former's business by anticompetitive reciprocity action directed at suppliers of ITT and its subsidiaries."

Then the fourth paragraph says, "Dick McLaren has talked to the A.G. about this case so that he is aware of it."

Do you ever remember Mr. McLaren talking to you?

Mr. MITCHELL. No, I have no recollection of that whatsoever, Senator.

Senator KENNEDY. It continues, "I don't believe he is aware that it is now 'ripe';" And it says, "You may want to talk to him about it on the phone."

Was there anything that you can add or any information you can give us as to why this might be in the memorandum?

Mr. MITCHELL. I haven't the faintest idea, Senator.

Senator KENNEDY. Mr. Kleindienst never talked to you about it?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or the executive assistant, your own executive assistant?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Then the next day or so, on April 9, from Mr. McLaren to Mr. Kleindienst:

Attached per your request is an extra copy of the memorandum to the Attorney General and draft complaint in the ITT-Canteen merger matter. If you can review this over the weekend you will be well prepared for the meeting with their counsel which I have confirmed for 10:30 a.m. Monday.

The last sentence, "I assume that you will want me to sit in on this, as I have done with Mr. Mitchell on a similar occasion."

Have you any idea why Mr. McLaren put those lines in?

Mr. MITCHELL. I haven't the faintest idea; I assume the similar occasion he may have made reference to was the practice or general practice when you are meeting with people to discuss antitrust matters, particularly litigation or potential litigation Mr. McLaren would sit in the meetings with you.

Senator KENNEDY. Is this your practice?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. But not with Mr. Geneen?

Mr. MITCHELL. Senator, my meeting with Mr. Geneen did not consider litigation or proposed litigation; it concerned solely the anti-trust policy in a general way of this administration.

Senator KENNEDY. Was it your understanding that this was Mr. Kleindienst's practice?

Mr. MITCHELL. I don't know what Mr. Kleindienst's practices were. I would hope that it would be.

Senator KENNEDY. Well, we discussed this issue with Mr. Kleindienst—the fact that he did have meetings at which Mr. McLaren was also not in attendance.

Mr. MITCHELL. Then the question would then arise whether they were discussing the litigation in a substantive way or something that pertained to it.

Senator KENNEDY. As I understand it, you disqualified yourself from the *Warner-Lambert* case; is that correct?

Mr. MITCHELL. That is correct, Senator.

Senator KENNEDY. Why was that?

Mr. MITCHELL. For the same reason that the law firm that I was formerly associated with represented, I believe it was, Warner-Lambert.

Senator KENNEDY. Did the fact that you knew or were a friend of Mr. Bobst have any influence on that decision?

Mr. MITCHELL. No, sir; it was in accordance with the policy of the Department; and I thank you for the compliment. Mr. Bobst's friend—that would be quite a feather in my cap.

Senator KENNEDY. How do you pronounce it?

Mr. MITCHELL. Bobst.

Senator KENNEDY. I believe you are familiar with the exchange of correspondence I had with Mr. Kleindienst some time ago about the *Warner-Lambert* case. As you may recall, I wrote to Mr. Kleindienst in November of 1970, asking some detailed questions about the

Department's handling of that case. I was also rather specific in my questions in the letter about when and how you disqualified yourself from that case.

On December 8, 1970, Mr. Kleindienst replied as follows:

On receipt of Mr. McLaren's memorandum and proposed complaint on November 6, 1970, an assistant advised the Attorney General of the nature of the matter; he thereupon disqualified himself and directed that the matter be referred to me.

Do you remember at least, at all——

Mr. MITCHELL. No, Senator. I would believe that would probably be done through my executive assistant.

Senator KENNEDY. Then, of course, we learned a little bit more about the matter during Mr. Kleindienst's appearance here the other day. His recollection last week was as follows:

I was in, I believe, Phoenix, Arizona, on the weekend of November 6, 7, 8 and 9—or 7, 8 and 9, whatever the dates were. I received a call, I believe on Friday night or a Saturday night, I don't remember which, from Mr. Mitchell, in which he asked me when I was going to return back to Washington, D.C. I said that I planned to return on Monday or Sunday night, to be in the office on Monday.

He asked me if I had any appointments scheduled on Monday and I said, "I don't know."

"He said, 'Do you think you could cancel them?'"

I said, "I think I could; for what reasons?"

"He said, 'Well, Mr. McLaren brought up a proposed injunction to me today,' on Friday—or if he called me on Saturday, he said "yesterday," but I believe it was a Friday night—I have a conflict of interest situation in that case, and have to disqualify myself. The complaint seeks to enjoin a merger that's going to take effect on Thursday, November—well, the following Thursday—and you're going to have to determine between one day when you get back and sometime on Wednesday, whether or not the Department is going to file the lawsuit and seek the injunction to prevent the proposed merger of Warner-Lambert and Parke-Davis.

I told him that I would call my secretary, or I think maybe I asked him to have his secretary get hold of my secretary and cancel my appointments on the following Monday.

Can you tell us why this matter would come to your desk at all or how you were able to become so familiar with that case if you had disqualified yourself?

Mr. MITCHELL. Senator, I have no recollection at all. I am certain if the telephone call took place that it wasn't with respect to the details involved. The time elements might have been furnished to me by somebody like my executive assistant. I have no recollection, no reason why I should.

Senator KENNEDY. You don't remember talking to Mr. Kleindienst about this case in the kind of detail that Mr. Kleindienst——

Mr. MITCHELL. Quite to the contrary. I don't know much about the case and still don't. It is quite conceivable that based on the information that my executive assistant would give me that I would call Mr. Kleindienst and ask him to come back for that purpose but I have no recollection of it. What year was it, Senator?

Senator KENNEDY. 1970.

Mr. MITCHELL. I am sure I talked to Mr. Kleindienst many, many times about many, many things and I certainly wouldn't remember the details of a conversation like that.

Senator KENNEDY. You wouldn't have this kind of information, obviously——

Mr. MITCHELL. No, sir.

Senator KENNEDY. In cases in which you disqualified yourself?

There is another area—I can either break here or get started on a new area or would the chairman ask me to desist?

The CHAIRMAN. How much longer do you have?

Senator KENNEDY. I have two more areas.

The CHAIRMAN. How long would that be?

Senator KENNEDY. I can't give you the time. We have moved along; that was one of the areas; I have two more.

The CHAIRMAN. Go ahead.

Senator Cook. Mr. Chairman, I hope this doesn't happen all the time.

The CHAIRMAN. I had understood you fellows had no more questions. [Laughter.]

Senator Cook. Well, I hope I didn't convey that to you, Mr. Chairman; I hope that was not your understanding of my——

The CHAIRMAN. I had understood it.

Senator KENNEDY. Do you want me to chair it now, Mr. Chairman?

The CHAIRMAN. Yes, sir. [Laughter.]

Senator KENNEDY. Senator Cook is recognized. [Laughter.]

Senator THURMOND. I just want to make one brief statement, Mr. Chairman. I have no questions. I just want to commend the Attorney General for his frank and forthright statements given in his testimony.

Mr. MITCHELL. Thank you, Senator.

Senator Cook. I didn't lose my turn, did I, Mr. Chairman?

Senator KENNEDY. I think you did. Your time is up. [Laughter.]

Senator Cook. Mr. Mitchell, as a matter of fact, the case against Canteen was a good case, wasn't it? ITT divested itself of Canteen pursuant to a consent decree of the Justice Department imposed on ITT?

Mr. MITCHELL. That is my understanding of it, Senator; yes, sir.

Senator Cook. We have had a rather lengthy discussion relative to the number of what are considered major conglomerate cases that were handled during 1971. Do you consider that it is more important to prosecute major cases than ordinary or regular cases or do you consider all cases of equal importance to the Justice Department?

Mr. MITCHELL. Well, they have—where the cases have an anti-competitive effect that affect our economy and consumers, we, of course, consider them all of equal weight.

Senator Cook. I am delighted to hear you say that because we have been discussing whether there were five or six or seven cases and I would like to refer to Judge McLaren's testimony at page 531—of the typewritten record—where he said in the 3 years that he was in the division that he filed 180 cases, and that he had an 80 percent settlement or consent agreement on those 180, so, consequently, he settled 140 of them.

Now, under the 80 percent rule, relative to the few cases that we discussed this morning, his record or all of his cases was better than the record that was proposed on those few cases that purported to be expounded on this morning; wouldn't you believe?

Mr. MITCHELL. I think the ratio would prove that, Senator.

Senator Cook. I hope this doesn't come as too much of a surprise to you, Mr. Mitchell, but Mr. Perot is on the board of directors of the Nixon foundation, but even if he were on the board of the Nixon foundation, he didn't fare too well being a member of that board of directors, if LTV was divested of Jones & Laughlin Steel Corp.; was he?

Mr. MITCHELL. I didn't know Mr. Perot had any relationship to LTV.

Senator COOK. Well, I am sorry; you are correct. I take that back. But—[Laughter.]

Well, I am caught, Mr. Mitchell, and I thank you. I guess I just got caught up in this. I thought I was going to make a good point and wound up not being able to make it. [Laughter.]

I have got to apologize.

Senator KENNEDY. You have that same problem.

Senator COOK. I have got to apologize to the press.

Mr. Mitchell, I would like to read to you an article from the New York Times under the date of August 1, 1971, and I would like to put it into the record. The headline is "ITT Cut Back May End Era of Giant Mergers." An article by Mr. Gene Smith and it says:

The day of the giant mergers may have ended Saturday when the International Telephone and Telegraph Corporation agreed to divest itself of some of its recent acquisitions. In return the Justice Department will terminate its antitrust suit challenging ITT's acquisitions of the Canteen Corporation, the Grinnell Corporation and the Hartford Fire Insurance Company. Attorneys for the Justice Department and ITT hoped to be able to file joint consent decrees this week in federal courts in Chicago and New Haven where the Canteen Corporation and Grinnell action were to have been heard. The decree should become final 30 days later barring the filing of protests by outsiders who might seek to challenge the agreement between the government and the giant corporations.

Now, I would like to put this into the record because I think it indicates exactly what the Justice Department and the Antitrust Division wanted to do. It wanted to cut back—it sets forth in here that they will be prohibited from acquiring any corporations of \$100 million for a period of 10 years, any insurance companies of \$10 million or more for a period of 10 years, and any corporations that would constitute a monopoly within any given area within the United States with total assets of over \$25 million. So I would like to put that into the record.

Now, getting back to discussions that we had this morning about the fact that you had had a discussion with Mr. Geneen in 1970 and he gave you a basic policy. At that time did he discuss with you that he was also seeing many other people, not only officials in the administration but people on the Hill also?

Mr. MITCHELL. No, sir; he did not.

Senator COOK. I am anxious to hear from Mr. Geneen and I won't do it on the basis of hearsay but by asking him the Senators and Congressmen's offices that he went to.

Mr. MITCHELL. Senator, my only knowledge concerning that was an article that appeared in the newspapers.

Senator COOK. That is why I will save it for Mr. Geneen because somehow or other I feel maybe the rules of evidence really ought to prevail.

Relative to a phrase in the Washington Post editorial of March 14, and I read it because I think it is so interesting:

So it doesn't necessarily matter whether what Brit Hume (Jack Anderson's assistant) said about what Dita told him about what the Attorney General allegedly told her about what President Nixon said is true.

That is a well put sentence about what we have been going over in the last few days.

Is there any reason to believe that it would be any more improper or less improper for a member of the Congress of the United States to come to your office and say, "John, the position the Department is taking in this matter is wrong. I know you filed this lawsuit but I want to talk to you about it and I think you ought to change your mind." Is there anything any different in that than for a man to say, who is president of a corporation to come to your office and say, "I want to talk to you about the Government's policy because I feel it to be improper and incorrect for the best interests of business in this country and my country"?

MR. MITCHELL. In my opinion, no, Senator, and as I am sure you are well aware of those circumstances with the Congressmen and Senators happens on frequent occasions.

Senator COOK. They have happened to you on quite a few occasions in your 3 years in office, have they not?

MR. MITCHELL. I can assure you that has been the case in many areas.

Senator COOK. Did you feel that you had to say to those members of Congress, "It is improper for you to come and talk to me about this because there is a suit pending"?

MR. MITCHELL. Not the slightest, just so long as I had not disqualified myself in connection with it.

Senator COOK. Then, Mr. Mitchell, don't you think that same right ought to prevail to any other citizen in this country?

MR. MITCHELL. I surely do, Senator, and I said so here, I think, five or six times and I would like to reaffirm it.

Senator COOK. Do you have any knowledge if there were any editors of newspapers or publishers of newspapers who came and talked to you relative to what is commonly referred to as the Failing Newspaper Act after the Supreme Court of the United States got through making a decision in that regard?

MR. MITCHELL. I think they talked to both Mr. McLaren and myself, on that and on many other subject matters.

Senator COOK. And they didn't particularly think——

MR. MITCHELL. Including the matter of subpoenaing the newspaper reporters' notes and a few things like that; they came to see me on quite a few occasions and we had quite a productive discussion.

Senator COOK. They didn't seem to think it improper?

MR. MITCHELL. I didn't see anything in the papers.

Senator COOK. And they thought it was their right to do that; didn't they?

MR. MITCHELL. I would think so and I would agree that it was.

Senator COOK. Just one last question because I think this ought to be put in the record.

Regardless of how much you may be badgered, or regardless of how much Mr. Kleindienst may be badgered, or regardless of how much Judge McLaren may be badgered, the fact is that the largest divestiture of any corporation in the history of the U.S. business took place under your administration as Attorney General of the United States, did it not?

MR. MITCHELL. That is true and my knowledge is based on what Dean Griswold said about it, and I think I respect his opinion because he has been involved in it for a long, long time.

Senator COOK. Thank you, Mr. Mitchell. Let them top that one one of these days.

(Recess.)

The CHAIRMAN. Proceed. Senator Kennedy?

Senator KENNEDY. Senator Cook was asking questions.

Mr. Mitchell, I would like to, if I could, review another area. This involves Mr. Herbert W. Kalmbach. Are you acquainted with Mr. Kalmbach?

Mr. MITCHELL. Yes; I know Mr. Kalmbach.

Senator KENNEDY. Have you been in touch with him? Could you tell us how you know him?

Mr. MITCHELL. I knew Mr. Kalmbach from the 1968 campaign and had seen him from time to time in California and Washington over a period of time.

Senator KENNEDY. How regularly are you in touch with him?

Mr. MITCHELL. Well, it isn't regularly, Senator; it is when the occasion presents itself.

Senator KENNEDY. Have you had any particular dealings with him since January 1969?

Mr. MITCHELL. Dealings? No; they have been social events and occasions.

Senator KENNEDY. And are you aware of the role of his firm in the planning of the San Diego convention?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Were you aware before Senator Hruska discussed a letter on the subject, and placed it in the record, that his firm had sought the Justice Department's views on certain legal matters relating to the convention?

Mr. MITCHELL. No; I did not know of that situation until after I was advised that there was such a letter that was sent, that Senator Hruska introduced here, into evidence.

Senator KENNEDY. How did you become aware of it?

Mr. MITCHELL. Aware of the letter?

Senator KENNEDY. Or that the Kalmbach firm was involved in the San Diego convention?

Mr. MITCHELL. I was aware of it in the newspapers, Senator.

Senator KENNEDY. After this had come out as a result of these hearings?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. And did anyone contact you at any time about legal issues surrounding the San Diego convention?

Mr. MITCHELL. No, sir.

Senator KENNEDY. And your comment is on the DeMarco letter, it was only after you read it in the newspapers; is that right?

Mr. MITCHELL. That is correct, sir.

Senator KENNEDY. Do you have any idea why Mr. DeMarco was given such a straightforward opinion letter when previously invariable, standard responses were given to Senator Cranston when he wrote about Indian water rights and to Mr. Rogovin when he wrote about Common Cause, and and to thousands of others asking for legal advice, by the Department of Justice; namely, that the Justice Department is the legal adviser to the President?

Mr. MITCHELL. I haven't the faintest idea, Senator. I have known from past practices in the Department that some of the divisions

handled those matters differently and in cases where they have tried to be helpful they frequently refer to statutory provisions or prior decisions and some of the letters have the disclaimer and some of them don't.

Senator KENNEDY. Well, was there any policy while you were Attorney General as to the types of responses that would be given to this type of inquiry?

Mr. MITCHELL. Yes, that is——

Senator KENNEDY. Did you have any guidelines, any rules, or any regulations?

Mr. MITCHELL. Yes; that is what I was referring to, the standard procedures of the Office of Legal Counsel which, of course, handles most of those letters that come to the Attorney General's office, unless they relate to some specific subject matter, generally have a disclaimer with respect to the Justice Department and the Attorney General being the lawyer for the President and the departments. But it has been the practice in the Department for many, many years when some of the divisions feel that they can be helpful to a party making an inquiry—a taxpayer—to provide him with whatever information they feel is appropriate.

Senator KENNEDY. On the question of Common Cause, Mr. Sessions, of the Criminal Division, gave the disclaimer, and yet the Criminal Division, Mr. Keeney, responded directly to Mr. DeMarco's letter. Here you have two letters that went to the same division, and it would appear that there was different treatment.

Mr. MITCHELL. Well, it might have been because there were different individuals involved. I can't answer the question.

Senator KENNEDY. What sort of guide do they have? Was it just an individual judgment? As I understood your previous answer it related to the different divisions. Now, here you have one letter getting a response in the Criminal Division one way and the other another.

Mr. MITCHELL. I think if you go back and check the records of the Department, Senator, you will find that these have been handled in different ways by different people. I outlined our policy a minute ago and pointed out that a number of the divisions—I guess substantially all of them—they try to be helpful to the taxpayers and give them what information they can.

Senator KENNEDY. How is the taxpayer supposed to know whether he can go to the Justice Department and get this kind of guidance?

Mr. MITCHELL. I guess the best way would be to ask.

Senator KENNEDY. Just to keep writing in?

Mr. MITCHELL. Well, I would think he would only have to write in once and he would get his answer.

Senator KENNEDY. Well, Mr. Rogovin wrote in once and he got the standard answer. The Deputy Attorney General also had used the standard disclaimer, speaking for the Attorney General. It would appear to me, Mr. Mitchell, when you go into the divisions you get Mr. DeMarco and the Kalmbach firm getting one answer—a willingness by a member of the Criminal Division to respond to them—and Mr. Rogovin for Common Cause getting another. It is somewhat difficult for me to understand the rationale for the Justice Department procedures.

Mr. MITCHELL. Senator, maybe you and I ought to join in recommending to Mr. Kleindienst, that he get that straightened out.

Senator KENNEDY. Yes; I would hope so.

Did you disqualify yourself on any matters involving the Kalmbach firm based upon the fact that, as I understand, Mr. Kalmbach serves with you on the Nixon Foundation board?

Mr. MITCHELL. I don't recall that there was ever a case involving that firm.

Senator KENNEDY. The Kalmbach firm lists as one of its clients a firm named Coldwell, Banker & Co., a real estate firm in California and three other States. Are you familiar with that company?

Mr. MITCHELL. I have seen their signs all over southern California.

Senator KENNEDY. As you may recall, Mr. Leonard sent a recommendation to you with a note which said, "A.G. Solid Case—good facts," signed "J.L." This dealt with a fair housing claim against Coldwell; and then 6 days later Mr. Leonard sent the following note, returning the case to the housing section of the Civil Rights Division: "A.G. knows some of top people in Coldwell-Banker and can't believe that these practices are 'Co., policy'—wants you to make contact with Pres. or Bd. Chm. by letter to set out pertinent facts and see what results from negotiation——"

Mr. MITCHELL. Would you read that again, because I am sure I know nobody in the Coldwell Banker firm other than having seen their signs all over southern California.

Senator KENNEDY. This is a note on a memo transmitting a recommendation for filing a fair housing suit against Coldwell, Banker & Co., October 20, 1970, to the A.G. It is a note on the case. It says: "Solid Case—good facts." Signed "J.L." The note returning the case to the housing section of the Civil Rights Division, October 26, the letterhead being Assistant Attorney General, Department of Justice, says: "A.G. knows some of top people in Coldwell-Banker and can't believe that these practices are 'Co., policy'—wants you to make contact with Pres. or Bd. Chm. by letter to set out pertinent facts and see what results from negotiation." Signed "J.L."

Mr. MITCHELL. I am afraid Mr. Leonard was entirely mistaken about any knowledge I had or association or relationship with the people in that firm because I do not know them.

Senator KENNEDY. You don't know anyone in that firm?

Mr. MITCHELL. I would not have any occasion to, that I can think of.

Senator KENNEDY. Would you have been talking about the Coldwell, Banker firm since you knew Mr. Kalmbach?

Mr. MITCHELL. I knew Mr. Kalmbach. What relationship did he have with them?

Senator KENNEDY. They are general clients, I understand.

Mr. MITCHELL. That would not be within my knowledge whatsoever.

Senator KENNEDY. That would surprise you, would it, that those notes or those indications by Mr. Leonard would be written on that?

Mr. MITCHELL. Very, very much so, because of the fact that I do not know those people and would have no reason to.

Senator KENNEDY. I would like to yield. I will yield to Senator Tunney for the time being.

Senator HART (presiding). I arrived only a few minutes ago and I am not familiar with the time situation.

Senator KENNEDY. I think Senator Hruska legitimately has the time.

Senator HRUSKA. I have no further questions at this time.

Senator TUNNEY. Mr. Mitchell, on March 1, there was a press conference which I understand that you held at the White House and I have a transcript of the record of that press conference; and in answer to a question which was put to you, "Can you tell us about Jack Anderson's charges at ITT," you answered as a part of the answer, "I told the lady that I knew nothing about it. If I were her I would stop lobbying in connection with the matter and that I would have the appropriate people, lawyers from ITT, go back to the Justice Department where the matter was going to be settled."

Were you aware at the time that you talked to Mrs. Beard that there was a settlement in prospect for the ITT case?

Mr. MITCHELL. Senator, will you show me where that appears?

Senator TUNNEY. Yes, that appears at the bottom of the page. It is the last paragraph on page 1.

Mr. MITCHELL. By the way, that was held in the Executive Office Building not in the White House.

What was your question, Senator?

Senator TUNNEY. Well, at the time that you spoke to Mrs. Beard, were you aware of the fact that there was the possibility of a settlement of the ITT case? You used the word "settled," or the phrase "where the matter was going to be settled," and I am just curious if at the time you spoke to her you were aware of the fact there was the prospect of settlement of ITT?

Mr. MITCHELL. No, sir; I was not.

Senator TUNNEY. So the word "settled" was not used in context of a settlement?

Mr. MITCHELL. No; it was used obviously in connection with the discussions that have arisen since that period of time.

Senator TUNNEY. Did you think that there was anything inappropriate about the Beard confrontation from the point of view that Mrs. Beard, as a representative of ITT, should not be lobbying you on this matter? Did you feel that it was very inappropriate for her to come to you?

Mr. MITCHELL. Well, I would presume that if Mrs. Beard was aware of the fact that I had disqualified myself and approached me for the purpose of trying to advance the ITT cause, I would have thought it was inappropriate and I would also have thought it would have been inappropriate to do it at a social event of that type under any circumstances.

Senator TUNNEY. Do you know why it was that you didn't report the fact to someone in the Justice Department that Mrs. Beard was conducting this kind of lobbying activity? Did it strike you as appropriate to say that Mrs. Beard was conducting this kind of lobbying at cocktail parties that might prejudice the interests of the Government?

Mr. MITCHELL. Senator, I was the Attorney General and I would be the one to report it to myself.

Senator TUNNEY. No, I mean reporting it to the Acting Attorney General, Mr. Kleindienst, in the case?

Mr. MITCHELL. I would think it might have the reverse effect of having such an impact upon his and McLaren's determinations rather than the reverse. You know, when you disqualify yourself in these matters, you disqualify yourself in connection with this litigation.

Senator TUNNEY. I would just like to ask you a few questions regarding the role of the Attorney General. I think this is very pertinent to the consideration of Mr. Kleindienst's confirmation by the Senate.

What is the nature of the Attorney General's normal role in the administration of antitrust laws, particularly with regard to the practice of the Attorney General to meet with the Assistant Attorney General of the Antitrust Division on an ongoing basis to discuss a suit under consideration by the Antitrust Division?

Mr. MITCHELL. Let me start out, Senator, if I get the drift of your question, by saying the responsibility for the running of that department, whether it is an antitrust suit or anything else, is in the hands of the Attorney General. He is the one who has to make the ultimate decision. By way of practice, and particularly when you have such a competent individual as Judge McLaren in whom I had the fullest confidence, the practice was pretty well to let Mr. McLaren run the Antitrust Division. You do have statutory responsibilities in connection with the filing, signing complaints and filing suits; and I always felt very confident that Mr. McLaren when he had problems of policy that went beyond the guidelines that we had established and discussed, and I am not talking about the technical guidelines but the policy guidelines that were being discussed and had discussed, that he would come to me with those matters and he did and I think that is the way it should be handled.

Senator TUNNEY. Well, how about on a specific case, what is the extent of the Attorney General's involvement in a simple antitrust case?

Mr. MITCHELL. When you are filing a complaint?

Senator TUNNEY. Well, at the time you are filing a complaint and at the time that you are considering the possibilities of settlement.

Mr. MITCHELL. In the filing of a complaint it is the practice in the division, and I am sure it has existed for many years, to have a very lengthy staff memorandum prepared and customarily, of course, when the complaint comes up to the Attorney General it is a recommendation for prosecution or litigation.

The Assistant Attorney General or the Deputy Assistant Attorney General prepares a shorter memorandum to go with the staff memorandum and also making a recommendation and pointing out the highlights and any unusual features of any proposed litigation.

I, as Attorney General, of course, read and studied those memos and complaints and then acted on the complaint and the memorandum or else if I had questions on them, and I did in a number of cases, Mr. McLaren and I would confer about the subject matter and the decision would then be made.

Senator TUNNEY. Is it customary for the Attorney General to meet with the executives of the corporation after a suit has been filed to discuss the possibilities of a settlement?

Mr. MITCHELL. It has happened in quite a number of cases and I think that it is most appropriate that it be done. I am sure you are well aware that antitrust cases take many, many years to try and many, many years, sometimes on appeal, and if the public interest can be served by settlement, confirmed by a decree of a court, after the waiting of the 30-day period that Senator Cook was talking about in which people might present their opinions, I think that that is a much better practice than it is to proceed in all cases with litigation;

and if you recall the figures that Senator Cook gave you with respect to the settlement in the department, a great percentage of them are settled.

Senator TUNNEY. Would it be customary for the Attorney General to sit in on a meeting in which financial hardship arguments were made other than strictly legal or technical arguments regarding the divestiture?

Mr. MITCHELL. I think that would depend upon the individual case and circumstances involved in connection with it.

Senator TUNNEY. But it would not be atypical to have the Attorney General sit in on those meetings?

Mr. MITCHELL. Normally, those matters are left to the staff, but there have been quite a number of meetings in which you have matters at issue, some of which, of course, get to be technical because when you get into a settlement negotiation you frequently get down to technical considerations that are breaking points and I have done it on a number of occasions and find nothing wrong with it. As a matter of fact, if there is any question as to whether or not it is appropriate, I think the Attorney General should be involved.

Senator TUNNEY. Would it be typical, for instance, to have a series of meetings such as maybe five meetings with executives of the corporation that was having a settlement under consideration?

Mr. MITCHELL. It would depend upon the circumstances and the negotiations and I am sure that there have been a number of cases in the department where I have had multiple meetings with representatives of corporations relating to antitrust suits.

Senator TUNNEY. Would be in a settlement case?

Mr. MITCHELL. Yes, I believe in settlement cases.

Senator TUNNEY. Was there a settlement, as a result of those multiple meetings?

Mr. MITCHELL. Some of them were and some of them are still under negotiation.

Senator TUNNEY. Do you recall what the specific cases were?

Mr. MITCHELL. If I did, Senator, I wouldn't disclose them to this committee because they affect the status of these particular corporations. As you know, it is the policy of the Antitrust Division which we established to time any information relating to these matters to the point where the stockholders and the stock market are not affected by the disclosure of the information.

Senator TUNNEY. I was thinking of the cases that have already been settled.

Mr. MITCHELL. Well, I could go back and get them for you. I am sure LTV was one of them; I feel certain that was the case. I don't remember the particular meetings but we had long, extended negotiations with them.

Senator TUNNEY. With Mr. Rohatyn?

Mr. MITCHELL. No. No.

Senator TUNNEY. Excuse me. I didn't mean Mr. Rohatyn. I was thinking of something else.

Do you recall who it was that you had it with at the time that you were settling the LTV case?

Mr. MITCHELL. No, I do not, Senator, but I am sure Mr. McLaren and the people in the Antitrust Division would have a record of it.

Senator TUNNEY. What is the procedure followed when the recommendation of the Assistant Attorney General for Antitrust is overruled by the Attorney General?

Mr. MITCHELL. What recommendation are you referring to?

Senator TUNNEY. Recommendation not to settle or recommend to sue.

Mr. MITCHELL. Well, if it is a recommendation not to settle, you litigate, and if it is not to sue, you don't sue.

Senator TUNNEY. And there is no specific procedure followed in that, in devising a methodology to overrule the Assistant Attorney General?

Mr. MITCHELL. No; they are done after conferences and many times after very extensive conferences.

Senator TUNNEY. How many times have you overruled Mr. McLaren in a specific case?

Mr. MITCHELL. I can't remember, but I am sure it is a very limited number.

Senator TUNNEY. You don't recall?

Mr. MITCHELL. I have no recollection of all the 180 cases, something like that.

Senator TUNNEY. To your knowledge, did Mr. McLaren ever threaten to resign his position?

Mr. MITCHELL. He most assuredly did not, at least not to me, and I have never heard of him doing it except in the newspapers and I am sure that is not the case.

Senator TUNNEY. Mr. Mitchell, did you use Mr. Ramsden in the Ling-Temco-Vought case?

Mr. MITCHELL. Mr. McLaren did, as I understand it; yes, sir.

Senator TUNNEY. Do you recall, yourself, Mr. Ramsden being used?

Mr. MITCHELL. I recall only to this extent: When Mr. McLaren came up to my office to discuss some aspect of the settlement and the proposed decree that was to be submitted to the court, I believe it was in Pittsburgh, that he referred to the financial analysis that had been made with respect to the corporate structure, the corporate financing.

Senator TUNNEY. Do you recall the nature of the work that he did for you in that case?

Mr. MITCHELL. No; only as characterized by Mr. McLaren. I didn't read it.

Senator TUNNEY. Did you ever review his report?

Mr. MITCHELL. No; I did not read it or review it. It was just characterized by Mr. McLaren when we discussed the settlement and the subsequent decree.

Senator TUNNEY. Did you accept Mr. McLaren's recommendations?

Mr. MITCHELL. In the settlement of LTV?

Senator TUNNEY. Yes.

Mr. MITCHELL. Yes, I did.

Senator TUNNEY. Did Mr. McLaren want to settle that case?

Mr. MITCHELL. To the best of my recollection he did. As I recall it, he had handled all of the negotiations in connection with the settlement except the possibility of the appeals were—and this is generally how the Attorney General gets to see these people; they appeal through the Assistant Attorney General and then want to meet the Attorney General—and it is my recollection that Mr. McLaren's

position prevailed in that and there were no changes made from the settlement that he offered to them.

Senator TUNNEY. Do you recall how Mr. Ramsden was hired in that case? Was Mr. Flanigan used to hire him?

Mr. MITCHELL. I haven't the faintest idea.

Senator TUNNEY. According to Mr. McLaren, Ramsden's work was a keystone in the LTV case and the decision that was made to settle. Were you aware of that?

Mr. MITCHELL. I was aware of the great complications they had in connection with the financial problems of LTV, and I am sure that it was the financial analysis that brought these to Mr. McLaren's attention and induced him to go ahead with the settlement that was eventually arrived at.

Senator TUNNEY. But you didn't feel, considering your other responsibilities, that it was important to review that financial data?

Mr. MITCHELL. No; as I say, the characterization of it presented to me by Mr. McLaren was quite adequate for my purposes. If I reviewed all the reports that are submitted in the Department of Justice the Attorney General would never be able to function.

Senator TUNNEY. Do you feel that there was any difference in the way you handled an important antitrust case such as LTV and the degree of involvement that you had with that case and the degree of involvement that Mr. Kleindienst had in the ITT case?

Mr. MITCHELL. Well, if I understand the degree of Mr. Kleindienst's involvement—which I have read in the newspapers and heard of ever since these hearings started.

Senator TUNNEY. Has Mr. Kleindienst ever discussed with you the degree of involvement that he had with ITT, after it had broken in the newspapers, at any time?

Mr. MITCHELL. No; he had not. We have obviously talked but he had gotten into the meat of it. I would have thought I would probably be more involved in the settlement of the LTV case than he was in ITT; and I think properly.

Senator TUNNEY. You had more meetings?

Mr. MITCHELL. I am not sure about the number of the meetings but I certainly spent more time in the discussions of the settlement in the LTV case with Judge McLaren than what I read of Mr. Kleindienst. Mr. Kleindienst had no involvement in the settlement negotiations and they were presented to him after they had been negotiated by Judge McLaren, if I understand the facts correctly.

Senator TUNNEY. And you were not involved in the active negotiations in the LTV case?

Mr. MITCHELL. Yes, sir.

Senator TUNNEY. I am not criticizing it.

Mr. MITCHELL. I would hope not. That is the obligation of the Attorney General.

Senator TUNNEY. It is probably not fair to ask you these questions without your having a greater opportunity to evaluate the questions but I would like to ask them of you and I ask them in a very constructive way. I think they are important questions when we consider overall policy,

I wrote Mr. Kleindienst a letter on March 6, 1972, in which I suggested certain ways of protecting the Attorney General, the Depu-

ty Attorney General, and the Assistant Attorney General for Antitrust, and the public in these settlement cases where you have very substantial corporations and lots of money involved and you have contracts between executives of corporations and representatives of the Government in the Justice Department.

For instance, a rule that whenever an antitrust case is settled a reasoned opinion be made public, articulating why the settlement is adequate in the public interest and achieves the original purpose of the complaint. This statement would go beyond the rather limited press release which is now issued when consent decrees are filed and would provide a basis for public evaluation of a proposed consent decree once it is filed for comment.

Do you feel that that would be appropriate in the future, either as an Executive order or legislation?

Mr. MITCHELL. I think that is consistent with my response to Senator Hart earlier today in connection with his observation about when you refuse to file, after a recommendation by whatever echelon in the Department that there be made public to the extent that it doesn't violate the confidential nature of any information that bears on the financial aspects of the corporation or otherwise, that there be such a statement filed. I think that would be quite appropriate.

Senator TUNNEY. And, second—

Mr. MITCHELL. It would save a lot of people in the Department from running up on the hill and complaining about it, I assure you of that.

Senator TUNNEY. If you were Attorney General would you make that kind of requirement now?

Mr. MITCHELL. Yes, I think that would be quite constructive.

Senator TUNNEY. And, second, a requirement that any ex parte meeting or phone conversations between defendants in pending antitrust cases and the Assistant Attorney General, Antitrust Division, or his deputy, or the Deputy Attorney General or the Attorney General or White House staff, be reported in written form by the particular official and listed with the court in which the suit is pending, including a brief description of the general purpose of the visit. Do you feel that that would be appropriate?

Mr. MITCHELL. No, I don't, Senator. I would believe that if you don't have officials that act properly in those circumstances then we shouldn't be holding the jobs and I see no reason to go to that administrative extent. I think the decisions that are made in the Department should be open and aired but I don't think you have to make a record every time somebody talks to somebody on the other side in an antitrust case or other case.

Senator TUNNEY. Don't you feel that if there were such a record in this particular case that much of the grounds of suspicion would have been removed?

Mr. MITCHELL. Well, Senator, as far as I can see there are no grounds for suspicion in this case. I think it is a house of cards that has been built up. I have not seen reference in this committee or in the newspapers or anywhere that Mr. Kleindienst did anything wrong in connection with the ITT case.

Senator TUNNEY. I said the suspicion. I am not saying that the suspicion is based on fact, but I am saying that there certainly are grounds for suspicion; you will have to agree with that.

Mr. MITCHELL. No, Senator, I certainly do not agree with that. I think you and I have just gotten through in this colloquy straightening out the fact that whether you are the Attorney General or the Acting Attorney General you have responsibilities to exercise in these antitrust cases and they were properly exercised by Mr. Kleindienst. If Mr. Kleindienst could be criticized in this case for one thing it would only be that he didn't participate more in the negotiations and settlement. That would be my opinion.

Senator TUNNEY. Well, certainly I do not think that the line of questioning that has emanated from this committee has in any way been accusatory. I think that there are certain factors that are involved that do create grounds for suspicion. The Beard memorandum to begin with, the fact that such a memorandum would be written, I think is grounds for suspicion. I think another ground for suspicion would be the fact that Mr. McLaren didn't speak to Mr. Ramsden but went through Mr. Flanigan that is a ground for suspicion. I am not saying there is reason to believe the suspicion is accurate.

Mr. MITCHELL. Senator, may I observe you are getting off the subject matter we were talking about, that is, the communications between the Attorney General, Deputy Attorney General, and Assistant Attorney General, with respect to these matters.

Senator TUNNEY. I grant you I am getting off the specific questions.

Mr. MITCHELL. I was trying to be responsive to that specific question.

Senator TUNNEY. You were responsive. I must say I disagreed with your conclusion on the second point, but you have been very responsive.

Mr. MITCHELL. I hope that is the only thing we ever disagree on.

Senator TUNNEY. Mr. Mitchell, I would like to just ask you one last question in this area and that is, do you feel that in the case of Lieutenant Governor Reinecke, and the conversations that he had with reporters, and the conversation that he had with me, do you have any idea, now that you have had an opportunity to refresh your recollection on the conversation that you have had with him, any idea why he would have indicated that when he saw you that he was acting as a member of the chamber of commerce of California trying to get the convention to San Diego?

Mr. MITCHELL. Senator, the only thing that I can refresh my recollection with is the statement you made out in the hall which was not consistent with the last statement that Lieutenant Governor Reinecke made, and I have no further refreshment of my recollection and I have no idea as to what purpose Lieutenant Governor Reinecke may have or reasons why he may have changed his position other than the fact that I think I read in the paper he was not in his office; he went back and checked the records in his office, and then realized that he had misstated or misspoken the first time out.

Senator TUNNEY. Well, Mr. Reinecke will be before the committee and we will have a chance to question him about that.

Senator HRUSKA. Mr. Mitchell, there is testimony in the record that in 3 years, when Judge McLaren was Assistant Attorney General, he filed 180 antitrust cases, 80 percent of which were settled and disposed of.

If we had a requirement that each time there was a conference leading to settlement a memorandum must be prepared and filed

stating the case, what was discussed and what was decided and so on, do you think there would be enough time to have settled 80 percent of those cases or would all of the division's time be spent writing memorandums?

Mr. MITCHELL. I would think that it would be extremely burdensome, Senator, and I just don't see how an operation such as the Antitrust Division or the Deputy Attorney General's Office or the Attorney General's Office could function under those circumstances.

Senator HRUSKA. In those conferences for settlement there are sometimes several people involved, are there not, at any given time?

Mr. MITCHELL. On the telephone conversation?

Senator HRUSKA. No, conferences, settlement conferences.

Mr. MITCHELL. Yes.

Senator HRUSKA. Doesn't the staff participate?

Mr. MITCHELL. Oh, yes; there is always an extensive number of the staff participating and, of course, the corporations have large representations and you would have quite a group that would be talking to the point where the memorandum would have to be prepared.

Senator HRUSKA. If a man had evil in his heart and he was going to prepare one of those memorandums, couldn't there be just as much suspicion directed against the memorandum as there would against the actual appearance itself?

Mr. MITCHELL. Well, I am sure that there could be, Senator, that anybody who wanted to create a file could create whatever file he wanted to.

Senator HRUSKA. And if there were 12 people involved in a conference, wouldn't it devolve upon that man making the recommendation to circulate that memorandum among each of the others—and get approval. Some of them might come from San Francisco or San Diego or New Orleans. It would involve a great amount of paperwork. Is it practical?

Mr. MITCHELL. I don't believe so, Senator. I told Senator Tunney that and the more I think about it the less practical it gets.

Senator HRUSKA. I yield the balance of my time to whomever on my left might want to make use of it.

Senator HART. The Senator from Pennsylvania?

Senator SCOTT. I guess I am to the left of the Senator from Nebraska but I have no further questions. [Laughter.]

I yield to the Senator who is to my left.

Senator MATHIAS. I have no questions.

Senator KENNEDY. Just finishing up on the *Coldwell Banker* case, and I just have one final area, Mr. Mitchell, and then I am finished.

As I understood earlier, you are not familiar with the *Coldwell Banker* firm; is that right?

Mr. MITCHELL. Other than what I have seen on their buildings and signs in southern California.

Senator KENNEDY. You are not familiar—

Mr. MITCHELL. From those I gather they are in the real estate business.

Senator KENNEDY. But I mean you don't know Mr. George Mott, who is the chairman or chief executive, or Wesley Poulson?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or John Parker or the directors, Mr. Gilchrist, or Mr. Mahoney—those names don't—

Mr. MITCHELL. No, sir.

Senator KENNEDY. Just going back, finally, and this is where we were yesterday about this time, and that was on the interagency committee. Yesterday some questions were raised about the relevance of the Interagency Committee, but as Senator Hart pointed out, this was a matter that was raised by Mr. McLaren himself both in connection with the delay in filing the original *Canteen* suit and in connection with the delay in the Supreme Court of filing the *Grinnell* suit. You said there were issues that would be raised.

As I remember, when Mr. Kleindienst had been talking with the Solicitor General he said there was an interagency committee considering some of these relevant issues and therefore they wanted to get their reaction to it. I think the committee itself is crucial because if, in fact, it involved other agencies, and if it was dealing with the problems of the market impact, international monetary effect, and other financial and economic parameters all along, beginning in 1969, then this really was not new to the Government with Mr. Walsh and Mr. Rohatyn's appeals in April of 1971. If this is true, then we must look elsewhere for an explanation of the turn-about in the antitrust enforcement procedures against conglomerates. So I have some questions here that can be answered quickly if you could help me on them and then we will wind up.

Is this the same interagency committee that was active in the spring in 1969 that Judge McLaren referred to?

Mr. MITCHELL. I don't know. Do you have reference to Judge McLaren's testimony; can you read it to me?

Senator KENNEDY. Yes; sure.

Mr. MITCHELL. Senator, I am not waiting for a lead; let me give you my recollection of it and see if that is the same one Mr. McLaren was talking about.

You must understand that Mr. McLaren and his staff are the ones who participated in most of the meetings. The meeting early in the administration had very much to do with the problems of the inflationary aspects of these conglomerate mergers and we did have interagency or interdepartmental meetings on that subject matter including, of course, the Council of Economic Advisers.

Later on, and I am not quite certain when it started, there was another interdepartmental group or a follow-on interdepartmental group that started to consider the total antitrust policies and particularly concentrated in the field of foreign governments and foreign corporations.

Senator KENNEDY. When was that?

Mr. MITCHELL. I don't—as I say, I don't recall whether it was a follow-on of the same group or whether it was a new initiative that was brought about 2 years perhaps ago.

Senator KENNEDY. This is Mr. McLaren in response to a question on page 233 [of the typewritten record]:

I meant to add, for Senator Hart's benefit, that back in April of 1969, which was the time we were talking about filing the *Canteen* case, another thing that was going on at that time was the review of antitrust policy by an interagency committee, of which I was the chairman. And ultimately we developed a memorandum on that subject, to which we all agreed, and how that ties into the time period on the filing of *Canteen* I do not know.

Mr. MITCHELL. That is the anti-inflation conglomerate problem.

Senator KENNEDY. Can we get that memorandum? If you can't give it to us, can we request that memorandum on the antitrust policy? Will you ask the chairman when he comes back?

Mr. HART. If the Department representative will make a note of it, I would assume that it could be furnished to us.

Senator KENNEDY. What I would like to do, then, if we could is, get those questions answered by the Department, Mr. Chairman, in writing, on the interagency committee. You see, part of the problem that we have had in trying to pursue this is that, as I understand from my staff, this committee isn't on the regular list of executive branch committees, the list which is supposed to have all the interagency committees, compiled by the Office of Management and Budget; OMB also checked with the Justice Department earlier this month, at my request, and the Department's committee management officer had no record of this interagency committee and so we have had this difficulty.

Mr. MITCHELL. Yes; there have been a number of ad hoc committees of this type, Senator, that functioned in areas of mutual interest among the departments.

Senator KENNEDY. On those questions, we could get in response from the Department rather than taking up the time here, if that is all right.

Senator HART. Well, Mr. Mitchell is no longer in a position to answer that.

Senator KENNEDY. Could we get it from the committee?

Senator HART. Subject to the distinguished Senator from Mississippi's veto, I will ask that the Department provide responses in writing to the question or questions raised by the Senator from Massachusetts.

Senator KENNEDY. Thank you.

This will be the last area.

You have taken the position, Mr. Mitchell, that you were not involved in any way with the convention planning?

Mr. MITCHELL. I said, Senator, that I was in no way involved in connection with the negotiations for the convention site, whether it would be in San Diego or otherwise.

Senator KENNEDY. Were you involved in the planning of the convention in other ways?

Mr. MITCHELL. Senator, the convention hasn't been planned yet, to my knowledge.

Senator KENNEDY. Well, have you been involved in any negotiations then about the convention itself? You say that you weren't involved in its going to San Diego. These are very carefully constructed answers, and I will ask a broader question if I could, then.

Have you been involved in the planning of the convention at all?

Mr. MITCHELL. To my knowledge, the convention hasn't been planned. They have selected a site and there are people, I am sure, engaged in trying to work out the physical facilities out there to accommodate them. I have not been engaged in that.

Senator KENNEDY. But, of course, the request came in from Mr. DeMarco in some considerable detail about the planning and programming which you say you didn't know anything about; isn't that right?

Mr. MITCHELL. I don't know what Mr. DeMarco's request was or what it referred to, other than the fact that I understood it was covered in the letter that Senator Hruska put into the record. It had to do with tax exemption or the criminal application of the Corrupt Practices Act.

Senator KENNEDY. Well, could you tell us in what way, in any way, if you had anything to do with the Republican convention?

Mr. MITCHELL. In what way, Senator?

Senator KENNEDY. If you had nothing to do with it, you can say absolutely not.

Mr. MITCHELL. There is no Republican convention as such. There is a site and I am sure they are working up plans in connection with the physical facilities and I know that they have appointed or at least the outline of a platform committee and beyond that why——

Senator KENNEDY. It is obvious, I mean, just in reading the newspapers, there have been committees that have been formed; there are officers to bring the convention to San Diego.

Mr. MITCHELL. This is the Republican National Committee you are talking about.

Senator KENNEDY. And you have, as I understand from what you said, absolutely nothing to do with any of the planning or programing——

Mr. MITCHELL. That is correct.

Senator KENNEDY (continuing). Of the Republican convention?

Mr. MITCHELL. I talked to Senator Dole, who is the chairman of the Republican National Committee, many times about matters but I have not been involved in any of the negotiations, planning, or any of the rest of it.

Senator KENNEDY. Just with Senator Dole?

Mr. MITCHELL. Well, I presume there may be other people, probably some of the people out of this committee down here for the reelection of the President.

Senator KENNEDY. In those conversations with Senator Dole, or with the committee that is bringing the convention to San Diego, you have had conversations then?

Mr. MITCHELL. The committee that is bringing the convention to San Diego, no; I have never talked to anybody in San Diego about the Republican National Convention.

Senator KENNEDY. In Washington have you talked to anybody about the convention?

Mr. MITCHELL. From San Diego, no.

Senator KENNEDY. Do I gather you talked to Senator Dole and the Republican National Committee about the Republican convention being in San Diego and that is the extent of it?

Mr. MITCHELL. That is not the extent of it. I have also talked about the proposed platform committee, the people involved in that, and I can't go on——

Senator KENNEDY. I am particularly interested in the site, location.

Mr. MITCHELL. No, sir.

Senator KENNEDY. Absolutely?

Mr. MITCHELL. The conversations that I had, had to do with Senator Dole, and if I remember the last conversation I had on the subject matter, Senator, was the suggestion that it might be a good idea to hold the convention in the Middle West and if you will go and check

the record you will find that the Republican committee, the site selection committee or whatever they call it, went to Louisville and, I believe, Kansas City or some other place after they had been to San Diego.

Senator KENNEDY. Did you talk with anyone on the financing of the convention in San Diego? Did you talk to Senator Dole about that?

Mr. MITCHELL. Financing the convention?

Senator KENNEDY. Yes.

Mr. MITCHELL. No, sir.

Senator KENNEDY. Or anyone at the national committee, the Republican National Committee?

Mr. MITCHELL. I presume, Senator, that you are talking about prior to the time that the San Diego site was selected, I presume, and if that be your question, the answer is no.

Senator KENNEDY. No; but you did sometime after the announcement of the site, did you then?

Mr. MITCHELL. I don't really recall whether I talked to him about the financing as such; there has been some discussions in my presence about the—what do they call it—the convention program. I remember a discussion where the Republicans and the Democrats went to the Price Commission to get approval of an increase in their advertising, and the prospects of the sale of advertising in this program and any number of things in general advertising that relate to the putting on of a national convention.

Senator SCOTT. If the Senator would yield, I would be glad to advise him at some other time of the negotiations with the Democrats on raising money because I have been the Republican assigned to talk it over with the Democrats on the committee, and the decisions made, and both parties are as anxious to get money out of those programs as they can.

Senator KENNEDY. That is good.

Mr. MITCHELL, you said at some time you did talk about the location of the Republican Convention with Senator Dole?

Mr. MITCHELL. Yes. To the best of my recollection Mr. Dole and I talked on probably two occasions about it and, as I say, I recall the last conversation was the thought that—and I am sure it was Mr. Dole's idea because he is from the Middle West—that it would be well to look at the convention sites in the Middle West, and, as I say, I recall, at least I believe I recall, seeing that the Republican National Committee site selection committee went to Louisville and, I believe, Kansas City or some other city in the Middle West.

Senator KENNEDY. When were the two conversations?

Mr. MITCHELL. I don't recall, Senator.

Senator KENNEDY. You don't recall?

Mr. MITCHELL. Sometime last spring or summer.

Senator KENNEDY. Did you have any conversations with the President about the San Diego convention—

Mr. MITCHELL. No, sir; I did not.

Senator KENNEDY. Or his staff?

Mr. MITCHELL. Staff of whom?

Senator KENNEDY. Of the convention?

Mr. MITCHELL. Of the Republican National Committee?

Senator KENNEDY. Of the President about the location of the Republican National Convention?

Mr. MITCHELL. I don't recall, Senator. I am sure that this being business of the Republican National Committee that the White House was probably collaterally interested in it and I am not sure that they were involved.

Senator KENNEDY. Do you remember any conversations that you had?

Mr. MITCHELL. No, sir.

Senator KENNEDY. You don't remember or you didn't have them?

Mr. MITCHELL. I don't recall that I have had any conversations with anybody outside of Chairman Dole.

Senator KENNEDY. Do you remember what party responsibilities you had prior to March 1st?

Mr. MITCHELL. Party responsibilities?

Senator KENNEDY. Yes, Republican Party.

Mr. MITCHELL. I do not have and did not have any responsibilities and I have no party responsibilities now, Senator.

Senator KENNEDY. No reelection campaign responsibilities?

Mr. MITCHELL. Not as yet. I hope to; I am going to make the application to the chairman of the committee if I ever get through with these hearings. [Laughter.]

Senator KENNEDY. I just saw the announcement saying "In order to be able to participate in the campaign for the re-election of the President, I have today submitted my resignation;" but he hasn't taken you up on it?

Mr. MITCHELL. The Chairman?

Senator KENNEDY. No, that is the President; reelection of the President: "I have today submitted my resignation."

Mr. MITCHELL. The President has taken me up on my resignation, yes. I was out of the Justice Department as of March 1.

Senator KENNEDY. I just want to assure you that, as you well know, there is a Republican Convention Committee on arrangements and there is a lot of planning; I have the letterhead right here.

Mr. MITCHELL. I don't doubt that for a moment. Arrangements, I gather, means the physical facilities that they obviously have to put together?

Senator KENNEDY. Sure. Well, that is what I was asking you about, too.

Mr. MITCHELL. Yes; well, I haven't been involved in that.

Senator KENNEDY. I want to thank you very much, Mr. Mitchell.

Mr. MITCHELL. You are quite welcome, Senator. It is always nice to be with you.

The CHAIRMAN. You are excused.

Mr. MITCHELL. Mr. Chairman, if you call me back up here again I am going to have to ask for witness fees because I am unemployed. [Laughter.]

The CHAIRMAN. That is all right. We will excuse you now. You made a fine witness.

Senator Cook. Mr. Chairman, I just want to add to Senator Kennedy, I have the letterhead of the Democratic National Committee and I want him to know, and I want to make this admission in front of Mr. Mitchell in the event that he soon has a high place in the Republican organization for the reelection of the President, that I received a letter the other day from Mr. O'Brien asking me to fill out a card to help pay a telephone bill because he told me how poor

they were. I want you to know I don't know how they got me because I am not on their mailing list.

Mr. MITCHELL. I received three of them, two of them came to the Justice Department.

Senator SCOTT. I would like to mention that the Law Enforcement Administration, if you want to go into that some other day, has aided the city of Miami in anticipation of the Democratic Convention with a certain amount of riot control equipment. I hope it isn't needed.

Senator KENNEDY. I understand they have aided the city of San Diego with more money.

The CHAIRMAN. At this point, I would like to place in the record the following items:

(1) Authorization for release of Mrs. Dita Beard's medical information; (2) biographical sketches of Dr. Joseph Snyder and Dr. Ray Prior; and (3) medical reports to the committee from Dr. Snyder and Dr. Prior.

(The material referred to follows:)

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

I, Dita Davis Beard, hereby authorize Dr. David Garland, Dr. L. M. Radetsky, Dr. Joseph Snyder and Dr. Ray Prior to release to the United States Senate Judiciary Committee their report setting forth my medical history, their diagnosis and prognosis of my past, current and future physical condition. They are further authorized to release to the same source all hospital and personal medical records concerning same.

Executed at Denver, Colorado this 13th day of March, 1972.

DITA DAVIS BEARD.

Approved as to form and substance:

White, Oberhansley and Fleming.

By DAVID W. FLEMING,

ATTORNEYS FOR DITA DAVIS BEARD.

LAURA J. ENGB, *Notary*,

My commission expires Apr. 8, 1975.

CURRICULUM VITAE OF RAY PRIOR, M.D.

Born: January 16, 1928—Mayfield, Kentucky.

Education: University of Kentucky—B.S. degree, 1948; Duke University—M.D. degree, 1952.

Internship: University of Maryland Hospital, Baltimore, Maryland July 1, 1952 to June 30, 1953.

Armed Forces: United States Air Force (Medical Corps)—August 3, 1953 to August 2, 1955. Discharge Rank: Captain.

Residencies: Internal Medicine—University of Colorado Medical Center July 1, 1955 to June 30, 1957; Cardiology—University of Colorado Medical Center July 1, 1957 to June 30, 1959.

Academic Positions: Instructor in Medicine, Division of Cardiology, University of Colorado Medical Center, one-half time: July 1, 1959 to June 30, 1961; Chief Section of Cardiology, Denver Veterans Administration Hospital, One-half time: July 1, 1959 to June 30, 1961; Assistant Professor of Medicine, Division of Cardiology, University of Colorado Medical Center, Full time: July 1, 1961 to July 1, 1967; Associate Professor of Medicine, Division of Cardiology, University of Colorado Medical Center, Full time: July 1, 1967 to present.

Memberships: American College of Cardiology—Fellow; American Federation for Clinical Research, Midwestern Section; American Heart Association; Council on Clinical Cardiology—Fellow; Association of University Cardiologists.

Scientific Articles Published on Heart Disease.

CURRICULUM VITAE OF JOSEPH SNYDER, M.D.

Born: Delnice, Yugoslavia, March 14, 1930.

High School: Lincoln High, Tacoma, Washington, 1936-1947.

College: University of Puget Sound, Tacoma, Washington, 1947-1951, B.S. in chemistry.

Medicine: University of Washington School of Medicine, M.D. 1955.

Internship: University of Minnesota Hospitals, Minneapolis, Minnesota, July 1955-July 1956.

Residency and Fellowship Training:

1. Medical Fellow University of Minnesota Hospitals, July 1956-October 1956.

2. Medical Fellow Mayo Foundation, October 1956-May 1957; July 1959-July 1960, October 1961-July 1962.

3. Fellow in Cardiovascular Physiology, July 1960-October 1961 (Dr. Earl H. Wood's Laboratory).

4. Fellow in Cardiology, University of Colorado Medical Center (Dr. S. G. Blount), July 1962-April 1964.

Military: USAF May 1957-July 1959, Forbes AFB, Kansas.

Marital Status: Married 1970, Ann Arden. 1 daughter.

Awards:

1. Thesis Honors, University of Washington School of Medicine (Paper: "Osmotic Properties of the Red Blood Cell").

2. Phi Sigma Biological Research, Honorary.

Present Positions:

1. Chief of Cardiology, Presbyterian Medical Center. 1970 to present.

2. Director, Cardiovascular Laboratory and Coronary Care Unit, Presbyterian Medical Center, 1964 to present.

3. Clinical Instructor in Medicine (Cardiology), University of Colorado Medical Center.

Society Memberships: Denver Medical Society; Colorado Medical Society; Colorado Heart Association; American Heart Association; American Medical Association; American College of Cardiology.

Specialty Boards:

1. Diplomate, American Board of Internal Medicine, September, 1965.

2. Certified, Subspecialty Board in Cardiovascular Disease, May, 1969.

Additional Titles and Positions:

1. Fellow, American College of Cardiology, 1970.

2. Fellow, Council of Clinical Cardiology, American Heart Association, 1970.

3. Member, Medical Review Panel, Colorado Blue Shield.

4. Chairman, Rehabilitation Committee, Colorado Heart Association.

Papers:

1. *Federation Proceedings*, ABS, April, 1961 ("Effect of Atrial Systole on Cardiac Output").

2. *Federation Proceedings*, ABS, April, 1962 ("Effect of Heart Rate on Atrial Contribution to Cardiac Performance").

3. *Circulation*, ABS, October, 1962 ("Regurgitation Associated with Closure of the Atrio-Ventricular Valves").

4. *Circulation Research*, July, 1966 ("Atrial Contribution to Cardiac Output").

5. "Management of Complete Heart Block Complicating Acute Myocardial Infarction", In Press.

6. *Circulation*, May, 1970, ("Rheumatic Heart Disease Epidemiology: III. The San Luis Valley Prevalence Study"), co-author.

MEDICAL REPORT BY DR. RAY PRIOR, UNIVERSITY OF COLORADO MEDICAL CENTER, DENVER, COLO.

Re Beard, Dita Davis

Place: Hospital Room, Rocky Mt. Osteopathic Hosp., 4701 E. 9th. Ave., Denver Co. 80220

Home Address: 2313 So. June St., Arlington, Virginia 22202

Date of Examination: March 12, 1972 1:30 p.m.

History.—At the age of six years, the patient and her family were told that she had a heart murmur. Her general health during childhood was good and in fact she received a sternal injury and cracked ribs while playing football during childhood. At the age of 36 years, she had some chest pain in Florida and was

hospitalized for two days and told she had a "cornonary". Since that time, she has had infrequent episodes of chest pain, described as squeezing, cramping, choking, inside under the sternal area and associated with a numbness or dead feeling in the left arm. These episodes may be relieved in minutes by Nitroglycerin and whiskey and helped some by sitting up. These episodes of chest pain have no known precipitating cause and have not been related to exercise or emotional stress except on one occasion during an election in 1969 or 1970. She has occasionally noticed skipped heart beats but gives no history of exertional dyspnea, orthopnea, paroxysmal nocturnal dyspnea, edema, hemoptysis or cough. Her exercise tolerance is good and she can swim several lengths of the swimming pool without shortness of breath although she reports she has some trouble climbing stairs.

On the way to Montana for a vacation, she developed chest pain on the airplane and was thus put off in Denver and admitted to the Rocky Mountain Osteopathic Hospital at 7:30 p.m. on March 3, 1972. On March 8th and 9th while in the coronary care unit, she developed more severe chest pain and began to have ventricular premature beats and these were treated with Lidocaine and Pronestyl and no ventricular premature beats were recorded after March 9th. Her other medication has included Coumadin, Heparin, Valium, Darvon, Phenergan, and Cardilate. She was transferred from the coronary care unit to a private room on March 12, 1972.

Past history reveals that she has generally been in good health all of her life and has been told by her private doctor that she has some arthritis of her spine, but she has had her gall bladder, GI tract and kidneys x-rayed and they were found to be normal. She has never had any plebitis, but occasionally has tension headaches. Her only allergy is to Codeine. She has had five children without difficulty and the oldest is 25 years of age and the youngest 16 and they are all living and well. She had a hysterectomy three years ago. She has smoked one pack of cigarettes per day for 33 years and readily admits that she is a heavy drinker.

Family history reveals that her father died at the age of 52 years of carcinoma of the pancreas. Her mother died at 60 years of age of multiple myeloma. One sister died at the age of 54 of cancer and there is no known history of coronary artery disease in the family.

Physical examination.—Height, 5'9", weight, 173 lb. Blood pressure, 130/75 in the left arm with the patient supine. The conjunctivae were slightly pale but there was no evidence of clubbing or cyanosis. Her arterial pulses had a normal volume and quality. The jugular venous pulse revealed normal crests and troughs and the jugular venous pressure was normal. The femoral and pedal pulses were normal and there was no brachial-femoral lag. Inspection of the precordium was unremarkable and palpation revealed no shocks, lifts or thrills. Auscultation over the aortic, pulmonary, tricuspid and mitral areas revealed normal heart sounds with no murmurs and no abnormal sounds. Examination of the lungs was normal. Examination of the abdomen revealed a well healed hysterectomy scar but no organs or masses were felt.

Electrocardiograms.—Occasional ventricular premature beats which were not early and were always unifocal were seen on tracings taken in the coronary care unit on March 8th and March 9th, but all other electrocardiograms were entirely within normal limits.

Chest X-Ray.—Normal pulmonary vascularity and the heart size was normal and the great vessels appeared normal.

Course in Hospital.—All of her cardiac enzymes were within normal limits but her blood sugar was slightly elevated. The remainder of the laboratory tests were normal. The patient gradually improved and was transferred from the coronary care unit to a private room on March 12, 1972.

Final Impression.—The patient is a middle-aged, obese, possibly prediabetic female who has smoked one pack of cigarettes a day for 33 years and thus does have some coronary artery disease risk factors. Her description of her chest pain is perfectly compatible for angina pectoris, but its lack of relation to exercise is certainly atypical. Thus, it is my final opinion that Mrs. Beard may possibly have angina pectoris due to atherosclerotic heart disease and would recommend that she have a treadmill exercise electrocardiographic study in the future. I do not believe that coronary arteriography is indicated at this time. I do believe that it would be in the patient's best interest that any necessary interrogation be done in her hospital room this week with her physician in attendance.

RAY PRYOR, M.D.,

Associate Professor of Medicine, Division of Cardiology.

March 13, 1972.

KAY J. RUYLE,
Notary Public.

MEDICAL REPORT BY DR. JOSEPH SNYDER, THE PRESBYTERIAN MEDICAL CENTER,
DENVER, COLO.

March 13, 1972.

Re Beard, Dita Davis

HISTORY

This 53-year-old, divorced female was seen at the Rocky Mountain Osteopathic Hospital on March 12, 1972 at the request of the U.S. Senate Judiciary Committee. The patient was questioned and examined and additional information was obtained from the hospital chart and from her physicians, Dr. Dave Garland and Dr. Leo Radetsky.

This patient was admitted to the Rocky Mountain Osteopathic Hospital on March 3, 1972 with a primary complaint of chest pain.

A review of the history reveals that the patient had a murmur in childhood, but this has not been heard on subsequent occasions. At the age 16 she apparently first developed some chest pains, the nature of which are difficult for her to describe. However, she had no real difficulty with chest pain until 1956 when while in Florida she developed severe chest pain and was hospitalized for two days. This pain was associated with dyspnea and she was allegedly told by her physicians that she had a "coronary".

During the past four to five years she has had infrequent episodes of pain. She has gone as long as one year without having pain and then will have episodes of pain occurring four to five times per day for two weeks. The chest pains are usually described as substernal, "grabbing", associated with numbness in the left arm and spreading of the pain into the upper chest and occasionally into the throat. She describes this pain by using the clenched-fist sign of Levine. She denies radiation of the pain into the jaw or into her teeth. She has noted the pain will occasionally spread into the left shoulder and into the interscapular area. There is no associated abdominal discomfort with this pain. The duration of the pain is quite variable, lasting from five to ten minutes or longer periods of time. She occasionally notices perspiration with her episodes of pain. She is unable to directly correlate her pain with exertion or emotional episodes. She has had nocturnal pain on rare occasions. She has had at least one episode of pain related to walking in the snow in Washington, D.C., but continues to state that "I can't make any sense out of this pain". She has had nitroglycerin available to her for a number of years and notes that if she rests and takes nitroglycerin promptly, she will usually obtain relief in a matter of several minutes.

On the day prior to her admission while on the plane flying to Denver, she developed some chest pain and allegedly fainted for a few seconds. She was given nitroglycerin by the stewardesses, and this combined with a small amount of alcohol appeared to ease her pain.

On March 3, 1972, the day of admission, the patient began to have chest pain which was unremitting. This pain was substernal and associated with numbness of the left arm. She called Dr. Garland and was admitted to the Rocky Mountain Osteopathic Hospital Coronary Care Unit at 7:30 p.m. She is vague about the duration of the pain but the hospital records reveal that she had pain of a minor degree for the next 36 to 48 hours. She subsequently did well until the morning of March 9, 1972 when, while still in the Coronary Care Unit, she developed substernal pain which lasted approximately 10 minutes. This was associated with the appearance of ventricular premature beats on the cardiac monitor and she subsequently was started on a xylocaine infusion and then switched to Pronestyl. Since that time there have been no further episodes of chest pain, and there have been no further episodes of arrhythmia.

There is no past history of hypertension. She denies orthopnea and nocturnal dyspnea. She states that she has reasonably good exercise reserve and states that she is able to swim without difficult five or six pool lengths. She is usually able to walk without developing chest pain. She has noted the appearance of "skipped" heart rhythm on occasions. She has noted some edema in summertime in the past and for this has taken a diuretic.

The patient was transferred from the Coronary Care Unit to the ward on March 12, 1972 and as mentioned above, has had no evidence of chest pain or documented arrhythmia since March 9, 1972.

Current Hospital Medical Program:

1. Heparin.
2. Pronestyl 250 mg. every six hours.
3. Valium 10 mg. q6hrs.
4. Isoridil 5 mg. t.i.d.

5. Cardilate 10 mg. four times a day.
6. Placidyl 500 mg. hs.
7. Ambodryl 50 mg. three times a day.
8. Dialose one daily.
9. Infeon.

Habits.—The patient is a one pack per day smoker and has smoked since the age of 20. She is a moderately heavy drinker, necessitated allegedly by her occupation (lobbyist for ITT).

Family History. The father died of carcinoma of the pancreas. The father was a moderately heavy drinker. The mother died at age 64 of multiple myeloma with questionable cerebral involvement. One sister died at 54 of cancer. There were no brothers. There is no family history of heart disease. The patient has five children, in good health.

Surgical Procedures.—(1) Surgery to the right shoulder for bursitis, Dr. Victor Liszka of Washington, D.C.; (2) Hysterectomy.

System Review.—The patient states that she has no allergies. She has been told that she has arthritis of her spine, questionable cervical. She denies any chest wall tenderness. She did receive a blow to her sternum at age 15 and it was cracked but denies any subsequent problems with this. There is no history of asthma, hay fever. She admits to some tension headaches on occasion. She denies any prior history of gallbladder, stomach or esophageal diseases. She had gallbladder, stomach and kidney x-rays in the last year to year and a half and these have all allegedly been normal. She states that her weight has increased some in the past five years. She states she weighed 132 pounds 25 years ago and currently weights about 173. There is no history of urinary tract infections, hematuria, calculi. There is no history of elevated cholesterol, gout. She has been told that she is "on the verge of diabetes" for several years. There is no history of seizures, convulsions, stroke.

Physical Examination.—Blood pressure 130/75; heart rate 80, regular; height five feet nine inches; weight 173 pounds.

The patient was a pleasant, somewhat obese female who was in no acute or chronic distress. Her color was good and there was no evidence of cyanosis or clubbing. The carotid, brachial, femoral, popliteal and pedal pulses were all present and of good quality. There was no arcus senilis present. The jugular venous pressure was normal. The thyroid was normal. The lungs were clear. On examination of the heart there were no lifts, thrills, shocks or thrusts. The rhythm was regular. The second sound over the pulmonary area was normally split. There were no gallops or murmurs present. There was a small scar over the right shoulder. There was a midline lower abdominal scar present. On examination of the abdomen there was no palpable liver or spleen. There was no peripheral edema.

Laboratory Data.—Pertinent laboratory data obtained from the chart revealed that the hematocrit on admission was 43 and had dropped to 36, reasons unknown. The CPK, LDH obtained on successive days between March 3 and March 9 were entirely within normal range. Fasting blood sugar was 140 mg. per cent.

Electrocardiogram.—The electrocardiograms obtained on March 3, 4, and 10 were reviewed. These electrocardiograms showed sinus rhythm with a normal P-R, QRS and Q-T interval. The mean electrical axis was approximately 60 degrees on the initial electrocardiogram and essentially unchanged on subsequent electrocardiogram. There were mild non-specific T changes noted on the initial electrocardiogram on March 3 with the subsequent electrocardiograms essentially normal. Monitor EKG rhythm strips were reviewed and revealed the presence of ventricular premature contractions on March 9, 1972, probably of left ventricular origin. These had a moderately long coupling interval and occurred only every fourth or fifth beat.

Chest X-Ray.—Chest x-ray obtained on March 4, 1972 revealed the overall heart size to be normal. The aorta and pulmonary artery appeared to be normal. The vascularity was normal. There were no infiltrates present.

Summary.—This 53-year-old female gives a history of chest pain dating back to 1956. She had been hospitalized on a number of occasions prior to her current episode. She developed her present episode while flying to Denver on March 2, 1972. The following day her pain became increasingly severe prompting her admission to the Coronary Care Unit at Rocky Mountain Osteopathic Hospital. She had some recurrent pain for the next 36 hours and then approximately six days following admission she had a short episode. Documented ventricular premature contractions were noted with this second episode of pain. Laboratory data including enzymes and electrocardiograms revealed no evidence of myocardial infarction. She was transferred from the Coronary Care Unit on March 12 and had been pain-free since March 9, 1972.

Pertinent points in the history reveal the past history of premature beats, history of moderately heavy smoking, and the diagnosis of probable diabetes mellitus.

Of interest, is the fact that the description of the pain is highly suggestive of coronary artery disease. However, the lack of a clear-cut relationship of the pain to activity and stress is somewhat inconsistent but obviously does not exclude this diagnosis.

Final Diagnoses:

- (1) Possible coronary artery disease with angina pectoris.
- (2) Ventricular premature contractions.
- (3) Obesity.
- (4) Diabetes mellitus.

Recommendations:

(1) I agree essentially with the current program outlined by her physicians. I believe that a glucose tolerance test, detailed lipid studies, and a treadmill exercise tolerance test are vital. The question of performing coronary cineangiography can be dealt with following the results of these tests.

(2) In the best interests of this patient, I strongly recommend that she not appear before the Senate committee in Washington, D.C. at the present time. I do not believe that her current situation will change significantly so that this could be possible in the next few weeks. I believe that such an appearance would be detrimental to this patient and in view of her cardiac status potentially disastrous. She could be interviewed by a sub-committee in her hospital room. The conditions of her interview must include the presence of a qualified physician who could manage any potential cardiac problem. The duration of the interview should be kept short and emotional stress to the patient should be minimized.

JOSEPH SNYDER, M.D.,

Chief, Cardiology Unit, Presbyterian Medical Center.

Signed before me this 13th day of March 1972.

ELSIE L. DEWIT,
Notary Public.

My commission expires: October 23, 1974.

The CHAIRMAN. Now, the doctors claim, state she cannot be moved, and I am appointing a subcommittee, it is nonpolitical, Senator Hart, chairman; Senator Kennedy, Senator Tunney; and of my leftwing brethren I am going to appoint Senator Cook, Senator Mathias, and Senator Gurney.

They will be in Denver next Monday.

Now, there can be one pressman, just one; that is what the doctors say. I am going to discuss with the press whom to name. Mr. Holloman of the committee staff will also represent me.

Senator SCOTT. Mr. Chairman, I think it would help to make it clear that the press arrangements are controlled by the recommendations of the physicians and not by the committee, but with the agreement of the committee; isn't that correct?

The CHAIRMAN. That is what the physicians stated; yes, sir. There will be only one pressman.

Senator HRUSKA. Is there a volunteer? (Laughter.)

Senator KENNEDY. Will the Senator yield?

I might just say—Senator Cook, is he here?—for the benefit and the information of the members of the committee, this afternoon Senator Cook and I, in compliance with the requests of the Judiciary Committee, phoned both Dr. Prior and Dr. Snyder and we had a conference call with them this afternoon, where we suggested a variety of different possible alternatives of proceeding, with the idea that they would give us the best in terms of medical expertise as to the way that we ought to proceed, setting forth that the first consideration was the health of Mrs. Beard; the second consideration was how we could best fulfill our responsibility in gaining the information that is desired by the committee itself.

A number of different alternatives were suggested: First the opportunity for Mrs. Beard to come here at some date in the future reasonably soon to be able to testify. Both Dr. Prior and Dr. Snyder indicated that they could give us absolutely no assurance that Mrs. Beard would be able to come to Washington or even to a neighboring hospital under the most sanitized conditions and be available to the full membership of the committee, that she was still undergoing tests and they would offer no hope whatever that this could be done in the next several weeks.

Senator Cook. If the Senator will yield, they stated at that point that if she were brought here that it would require or necessitate a new team of physicians that would have to run all the tests that they feel would be necessary, that the physicians obviously would not come here from out there, and, therefore, they could not even give any reasonable date in the near future when she could be questioned under any circumstances.

Senator KENNEDY. But the possibilities of coming here and the committee going out there and the length of time that would be available were discussed. I think we indicated for Mrs. Beard that if we were going to be limited to just 15 minutes and for just several days, obviously in terms of our responsibilities we would want to go at a later time. I feel I represent the opinion of both Dr. Snyder and Dr. Prior that Mrs. Beard will be available for an hour in any event, the first of next week, in the morning and possibly in the afternoon. We asked again if we were to go whether this in any way would be an undue threat to her safety and health, and they indicated that they thought it would not if a procedure could be outlined with her doctors present and constantly monitoring her condition to insure her health. They indicated that this group would be satisfactory: an official reporter, a member of the press, and this committee staff, limited staff, present as well. I think, Marlow, if there is anything else——

Senator Cook. No; I agree, Senator. I think you have covered it fully.

Senator HART. Mr. Chairman, I wonder if there has been an opportunity yet to consider, inasmuch as only one press representative will be permitted by the physicians to be present, the possibility of either a tape recorder which could be made available outside——

Senator Cook. I discussed this with the two doctors; we both did; and they saw nothing wrong with having a recorder—you mean a stenographer?

Senator HART. One or the other.

Senator Cook. Obviously, the committee will have a court reporter there.

The CHAIRMAN. Of course.

Senator Cook. There is no question about that.

The CHAIRMAN. We have already lined up the reporter.

Senator HART. I just asked that question because I didn't run for this assignment; it was thrust on me.

Senator Cook. I don't think anybody did.

Senator KENNEDY. Mr. Chairman, I had an inquiry—whether it would be possible to have a tape recorder which would be available to be played back to the press afterward.

Senator Cook. I think you would get a tape recorder back much faster than you could get a stenotype transcript.

Senator KENNEDY. Either way.

Senator COOK. Then we could provide you the other for accuracy.

Senator KENNEDY. Could I ask, Mr. Chairman, would we be correct in assuming that as long as this subcommittee is in Denver we won't be having any other witnesses here?

The CHAIRMAN. We will get through with this this week if you will just lighten up some. [Laughter.]

Senator COOK. I am going to be with you, Senator.

Senator KENNEDY. We are all going to be out here.

The CHAIRMAN. Of course, we wouldn't have a session here.

Stand up, please, sir.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GENEEN. I do.

The CHAIRMAN. Mr. Geneen, identify yourself for the record.

TESTIMONY OF HAROLD S. GENEEN, PRESIDENT, INTERNATIONAL TELEPHONE & TELEGRAPH CORP., ACCOMPANIED BY PHIL E. GILBERT, JR., ATTORNEY

Mr. GENEEN. Mr. Chairman, my name is Harold S. Geneen. I am president, chairman and chief executive of International Telephone & Telegraph Corp.

The CHAIRMAN. Now, who is the gentleman with you?

Mr. GILBERT. My name is Phil E. Gilbert, Jr. I am a lawyer with the firm of Gilbert Segall & Young of 405 Park Avenue, New York.

The CHAIRMAN. Will you stand up.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GILBERT. Yes, sir, but I don't expect to give testimony.

The CHAIRMAN. Well, you might be asked some questions.

Mr. GILBERT. Yes, sir.

The CHAIRMAN. Do you have a prepared statement?

Mr. GENEEN. Yes, I do, Mr. Chairman.

May I proceed?

I appreciate the opportunity to present information to the committee which will hopefully aid in its deliberations.

First, let me summarize my understanding about the matters which have been raised in these hearings and then I will cover them in greater detail.

One. I approved the negotiated settlement by consent decree with the Department of Justice as a business decision—not a legal decision. I accepted the assessment by our lawyers that our chances of winning the cases in the Supreme Court were good. We had won the *Girnnell* and *Canteen* cases in the Federal district courts on a showing of the facts after long trials and we expected to win the cases in the Supreme Court. Our evaluation of the cases was similar to that expressed here by the Solicitor General but there were risks that the Supreme Court might find against us. While the chances of our losing in the Supreme Court were not rated as high, the consequences of losing were so adverse for the company as to require us to seek to eliminate this risk by trying to find a livable settlement.

Further, after two and a half years of litigation, we were faced with more years of litigation, great expense, and the further commitment of a great proportion of management time, all of which was highly important to our thinking. Although I did not like the settlement which we agreed to, and on principle I thought it was unfair, I thought we could live with it and I approved it. In fact we now anticipate that the prospects for ITT even after the required divestitures are made, are extremely good.

Two. I had from the outset believed that the new policy adopted by the Antitrust Division upon the advent of Mr. McLaren was ill advised as national policy—though I had no doubt it was sincere and well intentioned. I considered it to be legislation without a hearing or consideration by Congress. I, therefore, sought to bring to the attention of all who would listen in the Congress and in the executive branch and in interested organizations our views about that policy. I urged that that policy, if effected, would be harmful to many companies like ITT, and to U.S. commerce and industry. I also believed it would have effects that would be harmful to the U.S. balance of payments for the foreseeable future. I therefore urged that if such a policy were to be adopted it should only be the subject of legislation by Congress after full hearings by Congress, where all the aspects of the national interest could be fully considered.

Three. The ITT commitment to the San Diego Convention and Tourist Bureau in response to their solicitation was for \$100,000 in cash plus a contingent additional \$100,000 in cash if other businesses in San Diego committed a further \$200,000. This was the final commitment made in a telegram to the San Diego Convention and Tourist Bureau—prior to the decision on the site selection, and it was made clear at that time that this was our total commitment. ITT has no other commitment.

We made this commitment because our new hotel was about to open and if it could be launched as Presidential headquarters, we would have obtained an outstanding public exposure worldwide for both our new hotel and the entire Sheraton chain at very moderate cost. We did obtain outside legal counsel's opinion that the contribution was lawful and proper, that it was deductible under the IRS laws as an ordinary and necessary business expense, and it is proportionate to similar expenditures in the past for new hotels in the Sheraton chain. Again this, our only contribution, was made directly to the San Diego Convention and Tourist Bureau.

Four. There was absolutely no connection between our contribution to the San Diego Convention and Tourist Bureau and the settlement of our antitrust actions with the Department of Justice.

Five. As to Mrs. Beard's memorandum, I know nothing about it. I first read it in the press. I believe it was never seen by anyone in ITT. I have found no one who knows if Mrs. Beard wrote it or if she did write it, when and why she wrote it. I disagree completely with its implications. The best way to clear up this whole situation would be for Mrs. Beard to testify about the statements in the alleged memorandum, and indeed, whether the memorandum itself is genuine. I sincerely hope that this committee can arrange for her testimony to be taken promptly.

Six. I know of no improper action by anyone in I.T. & T. in connection with the settlement of the antitrust litigation or the commit-

ment to the San Diego Convention and Tourist Bureau. I know of no improper action by anyone in the Department of Justice or any other Government agencies.

Now, if I may, let me turn to some of the details and the background of the antitrust problems of I.T. & T. with the Department of Justice.

I am a businessman, not a lawyer. My views are based on that perspective and with full recognition of the vast knowledge of antitrust and other law embodied in this committee and others who may have preceded me on the witness stand here.

There is today a very broad division of opinion among antitrust lawyers, economists, and legislators as to what is the right policy for antitrust law as regards a highly diversified company like I.T. & T. with very preponderant activities overseas.

In many respects the history of our lawsuits with the Antitrust Division is based solely and exclusively on this basic difference of opinion or policy.

This is not the place to attempt to go into any detail of the basics behind these divisions of opinion. There are antitrust lawyers and economists who feel strongly that only Congress can change the law after due hearing and reflection on all of the factors involved. There are others who believe that this is too long a process, that we should experiment and attempt to strengthen the law by novel antitrust philosophies which do not directly concern themselves with the actual antitrust question of injury in the marketplace.

As a businessman, fundamental in my mind is the question of, "What does a diversified company such as I.T. & T. do that is good for the economy and/or bad for the economy?"

On this basis, knowing the degree of effort that our company has consistently in the last 12 years expended as well as the personal effort of our management and myself to strengthen the company within the domestic economy while running the special risks and problems of operating in other countries, I am surprised to find a company such as ours, and there are others, without much chance of stating its case, put in the category of a nonconstructive and fearsome force within our society.

In my opinion nothing could be further from the truth. I do not say this lightly but rather from a review and appraisal of the contributions we are making to our domestic economy, both through our operations at home and in particular our contributions from abroad.

It is important to note that I.T. & T. in its acquisitions has not used strange security packages or ever made a hostile tender. We have used our own equity securities, paid fair values, and proceeded to earn back any premium paid, by improved management and perhaps harder work.

Moreover, the U.S. balance of payments and the soundness of its currency have been under constant pressure for the last 20 years and particularly in recent months.

We have felt that we were uniquely positioned to be able to carry the responsibility of making a contribution that few other companies could by helping to stem this tide which culminated this last August in a decline in the value of the dollar. Moreover, in my opinion, if further and continued effort is not made by other companies like ourselves with reasonable but not special support by Government policies, this can happen again.

Specifically, 12 years ago when I started with I.T. & T., we brought back approximately \$15 million annually to contribute to the credit side of the balance of payments. This year we will bring back approximately \$300 million from repatriation of earnings, exports, and so forth, and I might add that we do not import other than very minor amounts. In short, any company such as I.T. & T., which is scheduled during the next 10 years to bring back something on the order of \$5 billion from abroad, without imports, cannot be said to be working against the national interest in these trying times.

But to do this job, we have certain concerns and real risks. These include the occupational risks of an international business—expropriation, currency problems, and many others.

Before my time, the company was almost wiped out in World War II when most of its properties were overrun by the enemy. Within a few months of my advent into the company, the company lost its largest single asset—the Cuban Telephone Co.—overnight. At that time 80 percent of our earnings came from overseas. And at that time it became absolutely necessary if we were to continue to contribute to the balance-of-payments position, which we felt was valuable to the United States, that we had to build a domestic base large enough to absorb this kind of catastrophic shock and still retain the confidence of our investors and the availability of our credit sources. This we proceeded to do in the only way that was available to us—not by concentrating markets, but by diversifying our industrial activities.

That these risks are real is brought out by other such catastrophic losses in recent months. Our problems in Peru where we did work out a blocked settlement is an example that was only a few months ago. Only a few months ago we lost our \$150 million telephone company in Chile along with the interests of the copper companies and others. These are not the normal risks of domestic business where a reduction in earnings can be recovered by management improvement. These are catastrophic losses where the investment disappears forever overnight. I would add that we have some insurance on our Chile Telephone Co., but nevertheless we have had to charge off on our statement this year some \$70 million for this item alone. I think these are examples.

I think that the committee should understand that I.T. & T. has paid in the past a high price for a unique position enabling it to contribute to the U.S. balance of payments, and more importantly that I.T. & T.'s interest in growth was not a question of mere aggrandizement but arose from the necessity of balancing foreign risks and the need for credit abroad to maintain our market share and expand our repatriation of dollars, while at the same time keeping a degree of security for our shareholders by leveraging our foreign credit off the strength of our domestic base.

I make these points because I think it should be clear to the members of this committee that we are trying to run a constructive enterprise, an honest enterprise, a hard-working enterprise, one which has enabled us to become one of the top five contributors to the national balance of payments.

This question however should not be limited to I.T. & T. There are many other excellent companies in the United States who need the same kind of support we do. When a company reaches the point of being only slightly less than half abroad in its activities and financ-

ing requirements, then it too will have to face the same problems we have, if it is to continue with its growth and contribution.

Therefore let me say as a businessman that there are many reasons why the full story of the so-called conglomerate, diversified company, and particularly a diversified international company must be looked at fully before sweeping legislation is enacted.

Just one small straw in this direction is the last report I have seen on this subject, namely, the Stigler report, which was sponsored by this administration. This report was prepared by a very learned and experienced group of economists and lawyers headed by Professor Stigler of the University of Chicago, who recommended that the Department of Justice should "decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon." He further, the report rather, urged the Department to "resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets."

Now perhaps with this background I can explain the course of our decisions and actions in relation to the Antitrust Division of the Department of Justice. Because it has always been our impression that the actions and programs which we undertook were constructive and for the purposes outlined above, we have been perplexed by what seemed to us to be a completely arbitrary application of the law. As I said earlier, I can understand the viewpoints expressed but not the logic nor the basis for them since I maintain that there has been far too little factual material developed to support the changes contemplated.

It has been our impression from the beginning therefore that we were being sued on the basis of "bigness per se" rather than on the facts of any injury to the marketplace or competition, and despite the fact that we felt that our actions were completely constructive to the economy. To this should be added that we had the best legal advice we could obtain which told us that what we proposed to do was wholly within our rights and complied fully with the antitrust laws.

Mind, you, this was not an attempt to seek a confrontation with the Department of Justice of the U.S. Government. We did feel the need to go forward and we did feel that the facts of our position would slowly surface through the cases; namely, that there was no injury to the market or anticompetitive action. I would like to make this point particularly because I deeply respect Mr. McLaren's dedication as a public servant to his duties as he saw them. However, as a businessman and concerned with the practical business contributions that we felt necessary to the whole of our Government, I have never hesitated to disagree on this fundamental facet of antitrust policy. I must add that I felt we were being used as a guinea pig to accomplish extensions of the law equivalent to major legislation without resort to Congress where we would have been able to present our point of view and asser the economic and financial implications of any proposed change in the law.

Since the parameters of this action however were not being worked out in the Congress, there were no hearings where we could present our policy arguments.

We were forced to turn to our stockholders, to the public, to officials of the Government, and perhaps I am somewhat aghast to admit it,

even the American Bar Association itself before whom I made an address on the subject of antitrust.

However, all of these questions which we have raised have been on the basic question of policy which should be reviewed in depth by agencies of the Government such as the Treasury Department who had the problems of the balance of payment, and the Commerce Department who had the problems of balance of trade, and the Council of Economic Advisors who had basic concern for continued employment and the economic welfare of the country, and at a later stage, the Office of the Assistant to the President for International Economic Affairs who was also concerned with losing exports and the balance of payment.

Now, following this line of reasoning we asked Judge Walsh, who was not our trial counsel on these cases but who is a partner in the firm which has principally represented I.T. & T. for 50 years and who is familiar with the procedures of the Department of Justice and the procedures of interdepartmental review of its policies to the extent that they affect other departments, to see if he could persuade them, the Department of Justice, to consider such a review of these policy considerations. I do not consider this an interference. It was an open and honest request and the judgment was to be made by them.

Further, I asked Mr. Rohatyn, one of our Directors, to present to the Department of Justice the economic and financial aspects of our case.

As has been brought out in the testimony before the committee the findings of two separate Federal district courts, in the case of *Grinnell* and then *Canteen*, vindicated our feelings about the correctness under the law of our position and the lack of any injury to competition. The court opinions, which bore heavily on the lack of facts established to support the Government's case were in our mind significant for two reasons. First, these were not normal antitrust cases at all. Second, the Government's position could only be supported on the basis of new theory—namely, that bigness per se is unlawful.

Now I have several excerpts from speeches by Judge McLaren in which he said the Department of Justice was not attacking bigness per se, but I have learned that the antitrust field is a very complex field, and this very point is subject to many interpretations. Suffice it to say, in our opinion, it was basically an attack on bigness per se, an attempt to make new legislation without Congress in this matter.

While we felt that our cases were sound and solidly backed by the facts which established that there had been no injury to competition and that competition was preserved, nevertheless, despite the strong findings in our favor by the Federal district courts, who had spent weeks of time in trial and consideration, and were highly informed about the facts of the market, there nevertheless remained a contingent risk in further litigation. We therefore continued, and I would be without full responsibility to our stockholders if we had not, to seek settlement at the same time that the cases were going forward toward the U.S. Supreme Court.

In retrospect, in the face of much of the testimony as to the Department's thinking which I was not aware of, it would appear that a logical and fair settlement was arrived at, and that the process of negotiation was fair, was demanding from the standpoint of the Government and from us, and resulted in a very major accomplish-

ment from the Government's standpoint, while allowing us to continue our operations, which we think are a contribution to the national interest.

Perhaps two or three thoughts in this area will help clarify.

First, there could be no voluntary settlement that divested Hartford Fire Insurance Co. My emphasis is on the word "voluntary." The losses which we would have have suffered, and which had been made more difficult by changes in both the accounting rules and tax laws in the interim period, were such that no board of directors could voluntarily vote to take this action. It was certain therefore that no voluntary settlement could be accepted by us if it included divestiture of Hartford.

Second, as to the Grinnell Co., it was well known to us and to the Department's trial counsel that the Department's concern from an antitrust standpoint was almost wholly ascribable to the Fire Protection Division and that they were not concerned with anticompetitive aspects of the balance of the company. Further, our own trial lawyers, based upon the facts of the case, felt that even if we had lost the case in the Supreme Court it probably would have been remanded back to the district court and the worst we could have suffered would have been a requirement to dispose of the Fire Protection Division. That is precisely what we gave up in this settlement. I was interested to see in the testimony that the Government's legal thinking followed in much the same order.

Third, the divestiture obtained by the Government of Grinnell fire protection, as well as Avis, Canteen, Levitt, and our life insurance companies eliminated completely any basis for antitrust concern in the Hartford matter in the opinion of antitrust lawyers on both sides.

Fourth, to refer to Dean Griswold's testimony, for the purposes of offering a deterrent to future mergers of size, the sheer size of the divestiture, which was the largest in the history of the antitrust laws, would stand as a practical precedent that conglomerate and antitrust cases could result in massive divestment.

We, of course, were not then aware of the thinking in the Department of Justice. We were only aware of what we needed as a minimum to continue our business and our operations. We wanted to stop not only the risk of further litigation, but also the wide investment of management time and we could go back to running our business.

In short, when one adds the 10-year ban on reciprocity and acquisitions which we accepted, I guess the Government did obtain almost everything that they had started to do. If there is merit, and I believe there is, to the point we have made that we and companies like us are an essential part of the national economy, particularly in our inflow of foreign earned dollars, we have preserved our ability to contribute to the future.

I would like to make one other comment on this part of my statement. At no time did I have any impression at any time or in any way that Judge McLaren was other than in complete control and charge of the policy and of the final settlement.

While I did not and do not agree with Judge McLaren's economic philosophy, I would like to register my respect for the diligence, integrity, and honor that was shown by the Department of Justice.

Now I would like to turn to our commitment to the San Diego Convention and Tourist Bureau. Obviously if the settlement was

fairly and properly reached, then the concerns about San Diego are limited to the question of whether it in itself is a proper business action.

Let me start by saying very simply that there was absolutely no connection between the action which we took in support of the San Diego Convention and Tourist Bureau's bid for a national political convention, and any other action or activity of our company other than the promotion of the Sheraton hotels.

I would like to start with why we were in San Diego on May 12, the time I first heard of any suggestion of supporting the local community in this bid for a national convention. We were there for our annual meeting because we are in particular a booster for the city of San Diego. We already had two hotels in the city and we were in construction on a third large hotel. This was to be a sizable hotel on the order of \$20 million of value when finished and, as such, it was one of the few new hotels that Sheraton both owned and was erecting in continental United States.

It is understandable, therefore that for purely commercial and business reasons we would be an enthusiastic supporter of the efforts of the San Diego Convention and Tourist Bureau, particularly with a new hotel to open shortly before the projected convention time.

Now I must say that this was broached to me first under very informal circumstances at a dinner party we had there for some 70 people at the conclusion of our annual meeting and it was broached by the local Congressman, Bob Wilson, on the basis of use of hotel space during a period of what I thought to be of less than maximum space demand for a new hotel. Also to be considered was the remarkable news value for a new hotel opening under these conditions and in the climate and scenic environment which has much to offer in an area like San Diego.

There were various discussions, but as that time I thought there were no commitments because it was broached on the theory of a possibility, not a certainty, not even an assurance, that such a convention could be attracted to a city the size of San Diego.

In subsequent review, particularly in terms of the Sheraton operating management, as to what we could properly offer, it was determined that a contribution in services was not feasible for administrative and other reasons, and our outside legal counsel recommended that any contribution should be in cash. Accordingly, it was the decision of the Sheraton Corp. to make the contribution in cash. The Sheraton people felt that a contribution on that basis of \$100,000 would be an extremely advantageous business investment for them and they fully expected to earn the bulk of it back during the convention itself. Further, for normal promotional expense by a new sizable hotel this was a very reasonable figure for almost any major hotel that Sheraton opens, even in less dominant position than they would occupy in the San Diego situation. For example, the Waikiki-Sheraton which was opened in July in Hawaii had cost about \$250,000 in promotional expenses and Sheraton has in the past incurred over \$200,000 on many occasions in opening expenses of new hotels. Moreover the news value of the convention with the presidential headquarters situated in the new hotel was of inestimable value to not only the San Diego hotel but other hotels in the Sheraton chain worldwide.

Therefore, on July 21 prior to the site—and I want to emphasize that—prior to the site selection board's meeting and prior to the

presentation of the San Diego Convention and Tourist Bureau of its bid for the convention, we dispatched a detailed telegram to the San Diego Convention and Tourist Bureau, in care of Congressman Bob Wilson, spelling out specifically what ITT Sheraton's pledge was. I think the telegram made it very clear that this was the entire pledge of ITT Sheraton or ITT or any subsidiary thereof. That pledge is contained in the telegram, a copy of which I will be glad to place with the committee, and it calls for three things:

1. A commitment that the presidential headquarters will be in the Sheraton Hotel if the bid should be successful.

2. A payment of \$100,000 in cash to the San Diego Convention and Tourist Bureau.

3. An offer, if needed, to contribute an additional \$100,000 again if needed and matched by other business organizations.

That is the only commitment made to the San Diego Convention and Tourist Bureau, or to anyone else for the convention.

We obtained outside legal advice that since this was in the ordinary course of Sheraton business and in proportion thereto, it was a proper and lawful action for the Sheraton chain consistent with their business practices, and it would be therefore allowable as a tax deduction under IRS rulings.

I would make one further comment. In my opinion considering that for \$100,000 one can buy perhaps a little less than 3 minutes of prime time on the TV networks, and considering the amount of publicity, dateline coverage, and other benefits to the Sheraton chain and Sheraton trademark worldwide from a major political convention, this was worth considerably more than any amount that Sheraton pledged. This was a solid business expenditure. It has absolutely no connection with our antitrust problems with the Department of Justice.

On the other points of the summary I gave at the beginning of this statement, I can add very little to what I have already said. I know virtually nothing about Mrs. Beard's memorandum. I know there was no connection between the settlement of the antitrust cases and our offer to the San Diego Convention and Tourist Bureau. And finally, to the best of my knowledge there has been no improper act by anyone in the Government or anyone in ITT with respect to the antitrust settlement or our offer to the San Diego Convention and Tourist Bureau.

I hope that my statement will assist the committee in its deliberations. I hope it will clear up some of the questions which have arisen. I trust that Mrs. Beard's physical condition will soon improve sufficiently to permit her to explain her memorandum.

Now I shall be happy to try to answer any questions from members of this committee.

Thank you.

The CHAIRMAN. Was Mrs. Beard working on the settlement of your—

Mr. GENEEN. I am sorry, Mr. Chairman, I did not hear you.

The CHAIRMAN. Was Mrs. Beard working for your company on the settlement of the antitrust case?

Mr. GENEEN. No; she was not. She had no such assignment.

The CHAIRMAN. Who was handling it?

Mr. GENEEN. Our lawyers were handling it, and to some degree, of course, our officers would be consulting with them and the entire handling was in their hands.

The CHAIRMAN. Did you ever talk to Mr. Kleindienst?

Mr. GENEEN. Did I ever talk to Mr. Kleindienst? I have never met or seen Mr. Kleindienst or talked with him.

The CHAIRMAN. Now you state that you would have gotten this money back, and instead of \$400,000, it turns out that it is \$200,000, is that correct?

Mr. GENEEN. That is correct, Mr. Eastland, I mean, Mr. Chairman, excuse me.

The CHAIRMAN. Senator Fong.

Senator FONG. Mr. Geneen; did you meet with Mr. Mitchell in his office?

Mr. GENEEN. Yes; I did.

Senator FONG. Will you tell this committee what was the purpose of that meeting?

Mr. GENEEN. The meeting was approximately August 4, I think that is the exact date, 1970, and I asked for a meeting with the Attorney General because I wanted to ask about the general antitrust policy of this administration, and he agreed to a meeting on the stipulation that we would not talk about our cases which we had no need to or desire to in my mind. I was interested in what the policy, and in that meeting, and this is over a year ago, and I am trying to substantially remember the content of the conversation. I said that I thought that the administration was following a policy of attaching ourselves and business in general on the basis of bigness per se, which is not a question of anticompetitive action in the market. I said, I think I said, that I thought his Savannah speech which he had given previously in, I think it was, June, could be taken or interpreted in that manner. He assured me that the policy of the Antitrust Division, that is the general policy, was not against bigness per se, and he assured me that this was not the policy of the administration. I think, if I recall correctly, I pointed out that the area of emergency which sort of had been in the situation when the administration came in of a rather wild speculative merging going on had changed. The tax laws had been changed, the accounting rules had been changed, and we had some decrease in the economy and so there was no need for a, you might say, backstop policy and that I was interested in what the fundamental policy would now be, and again, if I recall, he assured me it was not against bigness per se.

I think I pointed out to him some of the dangers of a policy of that approach in the sense that companies like our own, or others, could not expand overseas if we were not able to accumulate bases and nothing to do with competitive action large enough to sustain the risks that we take overseas.

Senator FONG. Did you feel that there was anything wrong in your seeing the Attorney General to talk to him about antitrust policy?

Mr. GENEEN. Not at all. I think the policy of the United States in respect to antitrust is something which I am entitled to know and, more importantly, I think if it is wrong I am entitled to express my views on the policy.

The CHAIRMAN. Who else did you talk to?

Mr. GENEEN. Well, I think the most important people I talked to were the people who were involved in the, you might say, the concerns with such a policy, such a general policy.

The CHAIRMAN. Who were they?

Mr. GENEEN. I could go right through them, Mr. Chairman. I think I told, if I recall correctly, the Attorney General at the time I talked with him I intended to talk with people in the administrative branch as to what I thought should be the general policy since he expressed it was not against bigness per se, and I think, to finish my conversation there, I think I conveyed to the Attorney General my impression that Mr. McLaren's interpretation of the policy in my opinion seemed to be a little different from his but that was really an area that he would have to look to.

I talked to Mr. John Erlichman shortly thereafter in which I was also assured that the administration policy was not against bigness per se.

I subsequently talked to the Secretary of Treasury, I think at that time it was Mr. Kennedy, because they are involved in the balance of payments in which resources were heavily involved in the policy of bigness per se which would prevent ours and other companies from being able to expand and bring back dollars mentioned in the statement.

I talked to the Secretary of Commerce, Mr. Stans. I talked to Mr. McCracken; I talked to Mr. Burns at that time; and, later, Mr. McCracken, because they were interested in the economic aspect of this.

At a later date I talked to Secretary Connally because he had the same problem that he inherited from Mr. Kennedy, and in later days when the office of the Assistant to the President on International Economic Affairs was filled by Mr. Peterson, I spent time talking with him and also helping or assisting him in any way I could in developing a policy toward helping with our balance of payments.

All these people had concerns and interests, as I saw it, in any policy which had the effect of sweeping legislation that would normally go through Congress and would prevent this kind of anticompetitive building of strength to operate in an overseas base.

Now, if I might digress for a moment I would just like to add one thing to that, Mr. Chairman. All over the world where you have large trading companies like ours, and others like us, that are out in these risk areas, bringing back money, these countries have governments that give all kinds of support to these companies because they know the value of these, and in those countries, probably the most important thing they do is allow them to build a base sufficient to absorb the risks of this kind, like I mentioned in Chile, these kinds of catastrophic and other kinds of overseas risks and this was the basic question——

The CHAIRMAN. Did you talk to Members of Congress also?

Mr. GENEEN. I had talked to Members of Congress. I can't remember them all. I appeared before Congressman Celler's committee, and I think I have talked to two or three members of his committee, Mr. Rodino. Mr. McCulloch, and, I think, Mr. Brooks.

I have talked to a lot of people outside the Government. I have talked to our stockholders, I talked to businessmen's committees in meetings and, as I said, I am not a lawyer but I even addressed the bar association on antitrust because I felt that strongly about the national interest effects of what could happen if this policy was allowed

to go through without the review of what would be needed to bring into focus all of these other factors, not just a very narrow view.

And I would like to add something on that, if I may. The issue is not just ITT or the Justice Department. We are, as I said, a large contributor to the balance of payments as a company bringing back, hopefully, \$5 billion over the next few years, but there are some \$40 billion of debt against the American dollar today and if there is not some way found, and we had I think in the third quarter a \$10 billion deficit in the balance of payments and I think it reached \$14 billion, these are annual amounts, and if there is not some way found to help companies like ours and others to do this job by better working between Government and business I don't know what will happen except if we devalue the dollar this year we could be on the basis of devaluing that every 3 years if we don't find some way to do this job, and my comment would be very simply if we don't do this job the Europeans and others who own that \$45 billion are not going to invest it back here but take more out from here.

And all I am saying, I am talking about a very broad—when I was talking to these people—a very broad fundamental issue that involves the whole United States and its next future and it was not just a question of antitrust law but what could be the sweeping effects of this kind of an answer that wasn't fully considered by the Congress with all the facts before it.

Now, I didn't mean to talk so long but I want you to understand that it wasn't just a simple question, this was a basic policy that affected a lot of things besides ITT.

Senator FONG. In other words, you felt as a businessman who had a cause, you should talk to anyone who would listen to you?

Mr. GENEEN. I did talk to anyone who listened to me.

Senator FONG. Did you talk to any Senators, any U.S. Senators?

Mr. GENEEN. I may have. I think I talked to Senator Hart, I think I talked to, I can't remember offhand, but I am sure I talked to other Senators who would give me an opportunity.

Senator FONG. Where did you talk with Senator Hart?

Mr. GENEEN. In his office.

Senator FONG. Did you feel it was all right to go to his office and talk with him?

Mr. GENEEN. Well, I think I am talking about what I call the general policy of the United States and I think under—it is a constitutional right, if I think this is a bad policy and it affects me that I have a right to plead my case to anybody in the Government as to honest redress of that problem.

Senator FONG. In your mind was there any difference between going to Senator Hart's office or going to the Attorney General's office and talking to them about the same problem?

Mr. GENEEN. As long as I was talking about general policy, not at all.

Senator FONG. And at no time did you talk to them about ITT or importune them to act or intervene in favor of ITT?

Mr. GENEEN. At no time did I importune anybody to intercede on behalf of ITT. I asked them to consider the policy and, if necessary, to intercede on the basis of policy. I had no concern about our cases as antitrust cases.

As you will recall, and I think the testimony that was put up in this room indicated, that two district courts which had reviewed our cases

in detail indicated that there was no anticompetitive actions as a result of our mergers. So I was not concerned about antitrust. I was concerned about the making of new legislative law that would make this illegal even though it wasn't anticompetitive, and that is the kind of a law I felt, for the good of the country, let alone ourselves, should be taken through Congress, with all the proper reviews, you might say hearing, where all these things could be put on the basis and the questions of balance of payments, what is our policy to be, and do we want to support companies to go out and do this job, certainly had to be so. Certainly whatever the decision of the congressional law would have been, obviously we would have complied with it.

Senator FONG. Mr. Geneen, you had won the *Grinnell* and *Canteen* cases?

Mr. GENEEN. That is right. Let me say we had won them both by July 2. The *Grinnell* case was announced in December of 1970, December 30, and the *Canteen* case—I think was July 2.

Senator FONG. And you also won the suit seeking an injunction in the *Hartford* case?

Mr. GENEEN. There was a long suit on the *Hartford* injunction which we won and which I would say was a complete preview of the basic case which we would have to take over again on *Hartford* in the trial and, in our opinion, that as probably our strongest case because it represented a company which was less than 5 percent of its industry.

Senator FONG. Now, Mr. Geneen, did I understand you to say you had nothing to do with Mrs. Beard?

Mr. GENEEN. No, I didn't say that. I said I knew nothing about her memorandum.

Senator FONG. Nothing about her memorandum or any connection of Mrs. Beard with the ITT cases?

Mr. GENEEN. I don't recall. I would say over a period of 2 years, maybe it was longer, going on 3 years, I guess that we were pressing these views on Members of Congress and members of the administration, and I am sure she was aware of our views and in some cases about going to the Congress she might well have set up the appointment and I would go. But these were questions of policy, not questions of selling. These were questions of our basic policy and I want to emphasize again that out of the basic antitrust laws, and we had very good legal opinion before we took these mergers, we were not concerned that the facts would not come out and support the fact there was no anticompetitive effect of these mergers, and I think the cases as they have come through have shown that to be the case.

So as long as we were not making new law, in a sense of just being against us that we were big, and I say we had to be big to do the job we were doing for overseas, as long as that wasn't a fact, I didn't have any concern about the cases.

Senator FONG. You got big by merger with other companies?

Mr. GENEEN. Beg pardon?

Senator FONG. I said you got big by merging with other companies?

Mr. GENEEN. Senator I think we got big by some mergers with other companies that might have been substantial but we also got big by hard work, and I would like to point out that when we started off, and I think I said this in our statement, 80 percent of our income came from overseas and then we lost Cuba and then we lost Peru and then—

Senator FONG. Is it correct, Mr. Geneen, that five of the seven corporations acquired by ITT were acquired prior to 1968?

Mr. GENEEN. I do not have a definite figure but we acquired a number of companies prior to 1968 and the companies we acquired which were the particular subject of a suit with the antitrust department I think in every case the negotiations and discussions had started before the end of 1968 and in some cases were very well advanced by the end of 1968.

Senator FONG. Let me ask you this question, Mr. Geneen: During the Kennedy administration and during the Johnson administration, while you were acquiring these corporations, did the Justice Department ever go into court to try to prevent you from acquiring any of these corporations?

Mr. GENEEN. No, Senator.

I think I have to say that, as far as the facts of the present situation are concerned, and I want to make it very clear that I am not trying to say what the law should or should not be changed to, if there is going to be a change I think it should be by congressional action where you have ample opportunity to review the concerns that I had in the national interest.

But going back to the law as it is, the previous administration, I think it was Assistant Attorney General Turner, held views that the law did not cover anything but anticompetitive action. In other words, he held the view that it was not a law against bigness per se, and when I talked to the Attorney General, that you referred to, and I asked him a question, he said that our policy is also—he did not say also—but he did say it was not against bigness per se.

But under the Assistant Attorney General Turner, he carried it out on this basis, that if there were no anticompetitive effect he did not interfere with the merger because it was not an anticompetitive action which presumably would come under the antitrust law. What we were concerned about was this constant statement being made to us by, first, the Attorney General, and then the administrative people on the other side and then even in Mr. McLaren's own speeches, "we are not against bigness per se," but even while this was being said to us there was this constant thing coming back at us. We were not doing anything anticompetitive. The cases showed it, the facts showed it, as we went along and yet these cases kept going forward on only one possible basis, that no matter what was being said really the law was trying to be made against bigness per se.

Now coming back to Donald Turner, the former Assistant Attorney General, he made it very clear that the law did not cover non-anticompetitive action. He did not try to change it. He made a public statement I believe saying that in effect if you wanted to have it apply to bigness per se this is the job of Congress, and I thoroughly agree with that, not just because it is a question of extending the law but because it then brings into play a host of very important economic factors. I have touched on things like the \$45 billion and things we have not got ahead of us, and it does tie in very seriously with what do we want to do as a country, and just thinking from our background as a company what do we want to do about this situation where we are losing \$10 billion a year in our balance of payments, getting problems of devaluation, what do we want to do between Government and business to rectify us and that is not just the question of running a precedent court case.

Senator FONG. Now, Mr. Turner, subscribing to the philosophy that bigness is not for his Department to go after, did he not pursue you or take any action whatsoever when you acquired these other companies, did he?

Mr. GENEEN. That is correct.

I would like to just be sure I am clear, Senator, in what you said. He was not saying that if bigness was accompanied by anticompetitive action that he was not going to go after us. He was just saying that bigness as such was not the case of an anticompetitive action.

Senator FONG. In fact, nothing was done by the Justice Department under his administration that affected the ITT operation. Was there any such action by the Department during Mr. Turner's tenure as Assistant Attorney General in charge of the antitrust division?

Mr. GENEEN. Unless there was an anticompetitive aspect in the marketplace, sir. You see his role was to preserve and keep competition, and I think historically this is the role of the antitrust division, basically to preserve competition, basically to, I would guess, you would say, remedy the problem, not necessarily be imputed.

Senator FONG. So, when your mergers with other corporations were taking place, he left you alone?

Mr. GENEEN. No, he knew what we were doing and he reviewed them and we have often given information to him but they reviewed them on the basis of what was anticompetitive, not how big were you.

Senator FONG. But he never stopped you?

Mr. GENEEN. I cannot recall. There may have been cases where he did. But the ones we went through with he did not, and I would like to make it very clear if we felt there was any anticompetitive aspects of any merger we were making we were quite willing to step away from it.

Senator FONG. May I ask whether, during the 8 years prior to President Nixon taking office—

Mr. GENEEN. Yes, sir.

Senator FONG (continuing). There were any suits brought by the Justice Department to enjoin you from "conglomerating" with any other companies?

Mr. GENEEN. In my memory, Senator, there were none. There may have been some kind of comment but I think that indicates just in itself that we were able to work properly and clearly with the Department of Justice where the question was anticompetitive action in the marketplace.

Senator FONG. Yes. Was there any suit brought during the 8 years prior to the Nixon administration by the Antitrust Division that sought to get you to disgorge or to divest corporations which you had acquired?

Mr. GENEEN. Not to my knowledge.

Senator FONG. The *Canteen* case the *Grinnell* case, and the *Hartford* case were the first cases that have come up as far as your corporation is concerned?

Mr. GENEEN. To my knowledge. Now there may have been some minor, something or other, not necessarily even involving—buried in our legal history but nothing important that ever came to my attention.

Senator FONG. And these three cases came up under Mr. McLaren. He felt that probably he should pursue another course than the policy pursued by Mr. Turner?

Mr. GENEEN. Well, when you say another course, he was saying that he was not pursuing bigness per se. This is written right in his statement, made public and they were affirmed by my conversation with the Attorney General that he was not, so in effect he was saying that he was pursuing us because of anticompetitive action.

Senator FONG. Yes.

Mr. GENEEN. So when the cases began to come through and there were no anticompetitive actions, the decision to keep pursuing these had to be only the basis of bigness per se because there was no other basis.

Senator FONG. Now, coming down to your contribution of \$100,000—

Mr. GENEEN. Yes, sir.

Senator FONG. (continuing) To the San Diego Tourist Bureau, or was it the Trade Bureau?

Mr. GENEEN. It was the San Diego Convention and Tourist Bureau.

Senator FONG. Your commitment is only for a \$100,000; is that correct?

Mr. GENEEN. Our written telegram which I said I would give to the committee is for \$100,000 in cash, conditioned on it being, the hotel being, the presidential headquarters, and an offer, if needed, to match another \$100,000 which means if the citizens put up \$200 we would put up another hundred and, as I think I said in my statement, Sheraton Hotel turned back the bulk of the \$100,000 during the convention itself—I am sorry, counsel reminded me that so far we have actually only paid a \$100,000, and while I cannot speak for the future, our understanding or impressions at the moment are that they will not need the second \$100,000.

Senator FONG. You said you spent \$250,000 advertising your hotel in Hawaii.

Mr. GENEEN. Promotional expense, I do not know whether it was advertising or the cost of bringing guests or what have you. I might add, Senator, in the hotel field, a basic opening is, a launching of a hotel is, a very expensive and normal part of their business, so much so that the preopening expenses are what they call it, and our books are capitalized and written off over 50 months, just to give you an idea that this is just a normal part of a hotel operation, an enormous splurge in launching and awareness among travel agents and people all over the world, and then you go back and earn it back.

Senator FONG. How many rooms have you in San Diego?

Mr. GENEEN. We have about a thousand rooms, between the three hotels we have. As of the convention time that we are committed to the port authority out there, to put up another 200 rooms before, I think it is, 1976.

Senator FONG. Now, with this \$100,000 that you contributed—

Mr. GENEEN. May I add, Senator, that the San Diego Convention and Tourist Bureau have never seemed to come through in the present.

Senator FONG (continuing). To the San Diego Tourist Bureau—

Mr. GENEEN. Yes.

Senator FONG. How much more would you need to spend to carry on the preopening work to promote your hotel?

Mr. GENEEN. I have not asked that as an operating question of the Sheraton management, but my guess would be not very much

more because with the kind of coverage that we should get out of a presidential headquarter, you would have TV coverage, you are talking about dateline coverage, you are talking about all kinds of worldwide coverage, and I think I made a comment in the speech that you could hardly buy 3 minutes of prime time for a \$100,000 on the networks. I would guess in the course of a presidential convention that our logo and our trademark and our marquee and the hotel would have to appear a number of times, and I think it would be quite obvious that this would be worth, I could not put a figure on it, but it might be worth a million dollars in value.

Senator FONG. May I ask you this question?

Mr. GENEEN. Yes, sir.

Senator FONG. Would the resulting publicity be worth in excess of the \$250,000 that you spent in Hawaii?

Mr. GENEEN. I cannot answer that, Mr. Senator, because I would have to go back to the Sheraton and I do not know what they expected to earn back out of their opening out of that Hawaiian hotel.

Senator FONG. I was there at the opening of the Sheraton Hotel in Hawaii.

Mr. GENEEN. Well, it looked expensive I am sure.

Senator FONG. And I slept in your bed for one night.

Mr. GENEEN. Thank you.

Senator HART. Senator Fong we have gone about 25 minutes.

Mr. GENEEN. Mr. Senator, could I just make a correction my counsel reminded me. In 1965, we had a pending merger with the ABC Broadcasting Co., and they intervened in the FCC proceeding and I do not know exactly the basis, it was on size, but it seems to me that their principal objection to the merger had to do with the possibility that the news sources would not be impartial or something of that nature. We finally called the merger off ourselves because for the same reason I have spoken before, after 2 years of litigation we could see just endless litigation and we all went back to work and said forget it.

Senator FONG. I have been advised I have already taken 25 minutes.

Mr. GENEEN. I am sorry, I probably caused it. I talked very long.

Senator HART. The chairman asked that we adjourn for the evening at 5:30.

Mr. Geneen, one of the least newsworthy statements of today will be my agreement with you that I thought your visit with me was personally proper. [Laughter.]

Mr. GENEEN. Thank you, Senator.

Senator HART. These questions are somewhat lengthy and I think will be helpful for all of us in an attempt to evaluate the basic concern that brings us all together.

Mr. GENEEN. Alright; thank you, sir.

Senator HART. I am hopeful we can get an understanding of what your Washington office is, its responsibilities, and its assignments and its recordkeeping. What are the normal responsibilities of the Washington office of I.T. & T.?

Mr. GENEEN. Senator, the normal and, I would say, ordinary, responsibility of our Washington office is primarily to furnish information to people, Congressman, Senators, or others who want to know something about our company, make our views known on

legislation which is prospective. In many cases information is solicited from us, they have their own philosophy and they have their own information and want some help on some of these things and that is our basic consideration.

Now in my case if I came down to speak to someone in the Congress they would probably set up the interviews and so on and so forth.

Now, beyond that they keep us informed on legislation which is pending, whether it might be on pensions or anything else, the Burke-Hartke bill is one which has been much on our minds recently because it touches on the same innate areas, and we have some appraisal from them of what is happening and what the prospects are and if we felt it was desirable we would go down again and make our views known to such people as we felt were interested and maybe could be helpful in reflecting their philosophy with any information we could give them.

Senator HART. How many people are employed in the office?

Mr. GENEEN. I don't have an accurate figure to offer you, Senator. My interview visits are generally in the sense of my coming down and very often I don't even go to the office, I go directly from the hotel to my business and then go back to work but I would make a rough guess, if I am wrong I will get it corrected, I would say somewhere around 20, 25 people, I may be wrong. Let me say that is all I ever see. Maybe there is another floor of them.

Senator HART. Well, through later testimony from the head of the Washington office we can get more precise figures.

Mr. GENEEN. Yes, you could, sir.

Senator HART. You are not in a position to tell us of the particular assignments, are you, of anyone in the office? Are some assigned to service the executive branches, some assigned to the Hill, some assigned to public information?

Mr. GENEEN. No, I can't. I can only say that generally speaking when I went to the executive branch usually Mr. Merriam accompanied me, if anybody did; sometimes I just went directly, and if I went to the Congress usually I was accompanied by one of several people, and there are several of them.

Senator HART. When did you first become aware of the problem with the Nixon administration antitrust enforcement policy with respect to I.T. & T. and conglomerates?

Mr. GENEEN. I guess it was really not so much the administration, because we don't know whose policy it was in the beginning. Mr. McLaren made some speeches very early, and I think that was probably February, March, that order of 1969, and then as we proceeded we seemed to have a cleavage of opinion, I guess. We had our lawyers explaining to us what the antitrust laws were, what our rights were and what made sense and, as I tried to point out in our statement, we had basic needs to expand the balance of risks and growth we were overseas, and the more we talked and the more our lawyers talked with the Antitrust Department the more it seemed to us there was a very basic change taking place from the last administration, and while we had no question about the fact that if anything we were doing was going to be anticompetitive, that we would be willing to not even go forward with such a merger. We usually make a pretty good study of that before we start and we kept saying these were the facts on these cases, and Mr. McLaren, I think at that

time, kept saying that he was going to sue us, and I think, I don't know whether it was then or a little later, he began to say largely because we were big, and that at some point I did get this appointment, I guess it was 1970, that is a year and some odd months later, with the Attorney General and still our cases had not been tried, at least verdicts had not been entered in them.

I guess they had not been tried, at least I got an assurance that the national policy or the administration policy was not against bigness per se and, therefore, my feeling was if our cases were not in anti-competitive action in the marketplace there was not an antitrust violation and if somebody did want some kind of a policy, and I will put it very simply, some kind of a policy of what companies should be or what they should be trying to do or how you would set up the national situation, either support companies like ours who go overseas to do this work or not, it should be only after a broad review, and all the way through, as I say, we kept getting the statement from the administration, from the Attorney General, and from everybody else, that: "Our policy is not against bigness," and all the way through, increasingly—you asked when it was first, it first seemed like a different opinion, that the facts were not in, but then the facts come and Mr. McLaren is still saying: "We are going to sue," but he did not say it, but obviously we were big, that is all.

Senator HART. What instructions did you give with respect to the suits, both the pendency and the prospect of the suits, what instructions did you give to the Washington office of I.T. & T.?

Mr. GENEEN. I don't recall giving them any instructions as to the suits. I think they had instructions—not instructions but I think they were aware of our policy feeling which was that nothing we were doing was in conflict with the antitrust laws because so far as we could see, and again without overdoing it, I would say the cases came through and proved it. Nothing we were doing was in anticompetitive area in the marketplace, and so they got the feeling, as we did, that somehow or other we were being used as sort of a guinea pig to extend the law, and you got into the real basic question, what was the general policy of the country in this respect.

Senator HART. The question I am trying to get some understanding for is, realizing your concern, recognizing they would be aware of the situation as it was developed, what instructions were given to either Mr. Merriam, Mr. Gerrity, or others to go to the Antitrust Department or to go to the Department of Justice but not Antitrust; given the seriousness of the prospect, as you have described it, certainly there was some game plan; wasn't there?

Mr. GENEEN. Well, I don't think we organized it that way. I think occasionally—I am just trying to think back, Senator—I think occasionally they would have an opportunity to express our views of, you might say, achieving what seemed to be the policy being followed and the policy we were told was the policy, and they might express this to a Congressman or anybody they had an opportunity to, but this would be on policy. And I don't recall giving the many specific instructions to do anything in this matter. Certainly they had no instructions to try to settle it.

Senator HART. Well, how was the decision taken that Mr. Klein-dienst would be the individual to approach with the argument that the balance of payments, the national interest argument that was

presented to them, how was it decided that Mr. Kleindienst would be the person to see?

Mr. GENEEN. Well, I think, if I recall, that someone in our Washington office, I think it was Mr. Ryan, reported he had run into Mr. Kleindienst and everybody was aware we were somewhat frustrated in getting anywhere with this problem, and he apparently agreed to listen to a general statement of our problem, and we felt that it should be addressed to Mr. Kleindienst because basically we had been addressing the same problems to Mr. McLaren, with a request that we be allowed to make a presentation on this basis, and that is all I can see in that.

We did one other thing which I think is on the record openly. We asked Judge Walsh, who, as I pointed out, was part of the firm who had represented us for years, was very familiar with the procedures in the antitrust department, to see if he could get them to set up a meeting in which they would have the people who were interested in the other areas of the balance of payments and the possible impact of the antitrust areas, in which they would be the judge, in which these factors would be brought out. This was sort of a half substitute maybe for the kind of a review that would normally take place with Congress if you are going to pass through legislation, bringing other factors in.

Senator HART. I understand that.

Mr. GENEEN. These were the two areas that I think were addressed to Mr. Kleindienst.

Senator HART. Now, more specifically, were you told by anyone in the executive branch, the White House or Secretariat that Mr. Kleindienst would be the person to approach rather than Mr. McLaren?

Mr. GENEEN. No; I don't recall that, sir. I think that choice was our own.

Senator HART. My 10 minutes—I have 1 minute remaining and I will discipline myself.

Mr. GENEEN. Yes sir.

Senator HART. What sort of written reports or records—a preliminary question, what sort of written policy exists with respect to the filing of reports or memorandaums after contact has been made by an ITT Washington office or New York office person with a member of the executive branch?

Mr. GENEEN. Well, Senator, there were no reports of that nature that were directed to my office, and Mr. Meriam who is going to testify—

Senator HART. First, my question is, is there a policy?

Mr. GENEEN. I would have to say, Mr. Senator, I don't know the policy because this would be carried out as an internal part of the Washington office basically.

Senator HART. You do not know whether there is or was a requirement in the Washington office that those active in contacting Government officials would file a memorandum of the contact?

Mr. GENEEN. No, I would not. It would not be directed to me.

Senator HART. And for such written records as are kept, maybe kept, in the ordinary course of business, such as I have described, I would have to inquire of the Director of the Washington office?

Mr. GENEEN. As to his procedures?

Senator HART. You are not aware of them?

Mr. GENEEN. The answer is yes, because I don't know the details.

Senator HART. Now, I am a minute over but I can't resist this one.

Mr. GENEEN. No, go to it.

Senator HART. Have you seen a written report of such a contact made by any of your personnel with a Government official?

Mr. GENEEN. No. I can't say from—you know, in all that period of years, what I exactly saw or not. Occasionally I would be apprised of some result of a contact like that, sometimes by Mr. Gerrity, and sometimes it might be a copy of a letter or something of that sort, but it wasn't formal.

Counsel reminds me that I have been looking at some of the material that has come up as a result of the case.

Senator HART. You had looked at the Mrs. Beard's memorandum?

Mr. GENEEN. That is correct.

Senator HART. You do not recall——

Mr. GENEEN. Let me say, Senator——

Senator HART. A memorandum of that nature?

Mr. GENEEN. I saw the gist of it in the newspaper. I have never seen the memorandum.

Senator HART. You do not recall seeing any similar report of an ITT official recounting an experience or contact with a Government official?

Mr. GENEEN. I couldn't say that, Senator. All these years I have been made aware of things here and there and I don't remember what form it took but certainly I would be told and sometimes I would get a memorandum from either the Public Relations Department or maybe I got a copy of something that they wrote, but it wasn't a part of a regular routine that I got any of these reports.

Senator HART. I have used 13 minutes.

The Senator from Massachusetts.

Senator KENNEDY. Mr. Geneen, if you will excuse me, I was absent for part of your testimony.

Mr. GENEEN. I am sorry.

Senator KENNEDY. I don't know whether Senator Hart had an opportunity to ask you, but would you give us at some time the dates on which you saw these various individuals to the best of your information?

Mr. GENEEN. I will do my best. They are approximate dates and I think they will be reasonably accurate.

Senator KENNEDY. Perhaps by tomorrow?

Mr. GENEEN. I think we can. Yes.

Senator KENNEDY. When you were reviewing the names of the people that you had seen, you mentioned Mr. Ehrlichman but I think you left off Mr. Colson and Mr. Flanigan.

Mr. GENEEN. Yes, I did and I can answer that. That is not purposeful. It is a long list and we will give you a complete list.

Senator KENNEDY. It is a long list.

When you had this conversation with Mr. Mitchell, what were you really hoping to accomplish?

Mr. GENEEN. Well, I was puzzled because Mr. McLaren kept saying he was not pursuing anybody on the basis of bigness and specifically so stated in several speeches, and we were getting a very strong feeling that that is exactly what he was doing, and my real interest was what is the policy of the Attorney General and the

Department of Justice, and he affirmed that it was not bigness, and if that were so I don't need anything more.

I felt our cases were correct because we examined them, and that is all I really wanted to find out, what the policy was because I had had no way of answering to a policy that says "I am going to sue you because you are what you are," and that is what we seemed to be getting.

Senator KENNEDY. What did you ask Mr. Mitchell to do at the end of the meeting? Did you ask Mr. Mitchell to do anything?

Mr. GENEEN. No, I didn't really ask him to do anything. I think I implied to him that I thought, and I am trying to recall now, that his policy as he expressed it might be different in definition than what Mr. McLaren thought it was, because we thought he was operating in a different manner.

Senator KENNEDY. In what respect was that?

Mr. GENEEN. Well, that he was pursuing the policy of bigness and the Attorney General was sitting there saying, "It's not our policy" and so while he may have thought that was the policy, I had some question whether Mr. McLaren and the Attorney General really had the same definition of policy because he was acting differently, and he made that comment, I think, that I thought it would be worthwhile for him to talk with Mr. McLaren sometime to see if they really did agree. I think he assured me that he knew well what the policy was with Mr. McLaren and that they did agree.

Senator KENNEDY. Do you know whether he ever did talk to Mr. McLaren?

Mr. GENEEN. No; I do not. I might say I never heard from Mr. Mitchell from that meeting until today.

Senator KENNEDY. As I understand, your primary interest was the antitrust policy as it related to the conglomerates, is that right?

Mr. GENEEN. Yes, it was a broad question of policy which, of course, would apply to many companies, including what seemed to be a new approach to conglomerates which was affecting us. It was a broad policy question on the question of bigness.

Senator KENNEDY. Did you know when you went in to see Mr. Mitchell that there were only four conglomerate cases then that were being pursued by the Antitrust Division and three of them were I.T. & T.? Had your counsel mentioned that to you?

Mr. GENEEN. Well, I think I was familiar at the time from whatever was in the newspapers, and I think Mr. McLaren made it very clear that what he was doing was on the basis of a policy and Mr. Mitchell or rather the Attorney General had made a speech in Savannah before I had this meeting in which he laid out what appeared to be a policy against bigness and I think I raised that question with him, as I recall.

Senator KENNEDY. But is it not that you went to talk to Mr. Mitchell about the Justice Department's antitrust policy as it related to conglomerates?

Mr. GENEEN. Yes. What I say is conglomerates, it related. I put it on the basis of bigness per se because as I understood it, it wasn't necessarily limited to conglomerates. It could have been a company that had only one industry and was going to buy another one. If it was a large industry that would be bigness rather than conglomerates, and I couldn't rightfully tell you what the policy was, except it was

being stated by Mr. McLaren that he was not against bigness per se and this kept coming through as a policy, yet we kept getting from our people that this was not the way it was being looked at at the operating levels.

Senator KENNEDY. Did you expect Mr. Mitchell to do anything after his conversation with you?

Mr. GENEEN. Not if his policy was what it said.

Senator KENNEDY. You mean anticompetitive?

Mr. GENEEN. It was his policy of not bigness per se and that was his policy I was going to accept because it was a good policy.

Senator KENNEDY. Did you have any feelings on what his views on this were? He had been making speeches on it. Counsel must have talked to you about the speech he made down in Georgia. Why did you think Mr. Mitchell was not following the same policy that Mr. McLaren was?

Mr. GENEEN. Well, he said he was not following a policy of bigness per se. He said they were only applying the statutes as they applied to any——

Senator KENNEDY. Did you feel Mr. McLaren was following the policy of bigness per se?

Mr. GENEEN. We felt that, but it wasn't quite so evident as to when the decisions came out and it was shown by the facts in the case that there was no anticompetitive aspects. At that point I would have assumed he was not following a policy of bigness per se but the causes would stop on some basis.

Now, there was one other thing that I think is important. In the Hartford injunction proceedings and in the *Grinnell* proceedings, the Department of Justice introduced a lot of factors and tables and things on the subject of, you might say, aggregation of assets. Now, this is not a question of anticompetitive actions in the marketplace, this is solely directed to the question of bigness per se. I might add that they even then attempted to do the same thing in the Canteen case and the Federal judge threw it out on the basis that this had nothing to do with anticompetitive case.

I might recall Judge Timber's opinion in the *Grinnell* case. He made the point that the issues had to be the question of concentration, you might say, marketplace situations that were an anticompetitive action and he made the comment if there was to be a question of aggregation of assets or size or bigness per se, as I call it, this was a problem for Congress. So you had this fundamental difference coming through which I think was real at the McLaren level.

Senator KENNEDY. My time—we only have a few more minutes. We have to adjourn at 5:30. I would like to, if I could, just finally ask, have you met Mr. McLaren?

Mr. GENEEN. I never have met Mr. McLaren.

Senator KENNEDY. Didn't you have a debate with Mr. McLaren at one time?

Mr. GENEEN. Well, I think I can put it this way, Senator. He addressed the Bar Association of New York one day on antitrust at the height of this, and I said I had the temerity, as a nonlawyer, to address the bar on our views on antitrust. This was an attempt to press our views at this time. This was a very fundamental thing that had happened, it was not a press case.

Senator KENNEDY. But you, as I understand it, never met him.?

Mr. GENEEN. No, I had never met him.

Senator KENNEDY. In your interview with these individuals you mentioned here, and in your press release that you talked about today, you never requested a meeting with Mr. McLaren?

Mr. GENEEN. From them?

Senator KENNEDY. From you to them?

Mr. GENEEN. No. I actually suggested particularly in the areas that we were more interested, this is the balance-of-payments people, the Treasury, the economic area, Mr. Peterson's area, I have requested that they take an interest because I thought they had an interest in this and I think I mentioned to Senator Hart that our approach to this was rather mainly interesting but we asked Judge Walsh, who had some background, to try to get the Department to set up a meeting where these people could come in to express their views, but that was kind of an odd assignment for me to put it on but it was a way of getting it open, because I feel if Mr. McLaren could hear the other side of the problem perhaps there could be some recognition he was following a policy, which, in my mind, was not a good policy.

Senator KENNEDY. I am going to yield. I appreciate your being here.

Mr. GENEEN. I appreciate being here.

Senator KENNEDY. And I will say I remember coming in and visiting you one time up in New York about generating some employment down in Fayette, Miss.

Mr. GENEEN. Yes.

Senator KENNEDY. So I have had the opportunity of meeting you before.

Mr. GENEEN. As I say, Senator, that little company that we started down there, which was headed by the mayor, is doing very well.

Senator KENNEDY. I appreciate that.

Mr. GENEEN. I should add for the benefit of the committee, this is an all-black situation we took on and it worked out very well. No other kinds——

Senator HART. The Senator from California.

Senator TUNNEY. I know we have just a very few moments, but inasmuch as the Beard memorandum was the reason I think we are all here, I would like to ask you a few questions——

Mr. GENEEN. Please do.

Senator TUNNEY (continuing). Regarding it. In the memo, the first sentence says, "I just had a long talk with E. J. G." Are those your initials?

Mr. GENEEN. No, those are not my initials, those are Mr. Gerrity's.

Senator TUNNEY. Mr. Gerrity's?

Mr. GENEEN. Right.

Senator TUNNEY. "I'm so sorry we got that call from the White House." Were you aware of any call from the White House?

Mr. GENEEN. No. I think I said, Senator, that I had never seen the memo.

Senator TUNNEY. No, no, I know that you didn't see the memo, but what I am talking about is the substance of the memo.

Mr. GENEEN. I don't know what call she is speaking about.

Senator TUNNEY. Are you aware of any call from the White House regarding the offer that you made to pick up \$200,000 worth of services for the convention?

Mr. GENEEN. It was a hundred thousand in cash and a hundred thousand to be matched, and I think——

Senator TUNNEY. I am sorry.

Mr. GENEEN. Yes, I understand it.

Senator TUNNEY. Excuse me.

Mr. GENEEN. It went to the San Diego Tourist Bureau, not the convention. This has been a problem all through this press coverage.

Senator TUNNEY. I certainly understand you applied it to the tourist bureau, but this was to bring the convention to San Diego?

Mr. GENEEN. But to answer your question, no, I do not know of any such call.

Senator TUNNEY. Did you have any conversations with Mr. Haldeman or anyone on the White House staff regarding the contribution that would be made to the tourist bureau?

Mr. GENEEN. I do not.

Senator TUNNEY. Did you have any conversations with Mr. Reinecke?

Mr. GENEEN. I did not.

Senator TUNNEY. Did you have any conversations with Mrs. Beard?

Mr. GENEEN. Yes. She spoke about it May 12, when we were out there in San Diego, and I don't recall of any conversations beyond that. At that time, as I said in my statement, it was conceptual, it was a speculative thing, and when it began to get closer to the date when the San Diego Convention Bureau had to make its bid, I think most of my information was coming from it, basically through it, Mr. Gerrity, whoever was talking to him down there, and the Sheraton people.

Senator TUNNEY. Do you recall any conversations with Mrs. Beard?

Mr. GENEEN. No.

Senator TUNNEY. Were there one, two——

Mr. GENEEN. Let me say one out there I recall.

Senator TUNNEY. In San Diego?

Mr. GENEEN. In San Diego, and I don't recall if I had any with her beyond it.

Senator TUNNEY. Was that at the same time you had a conversation with Congressman Wilson?

Mr. GENEEN. I think it was. I am not sure; you know this was a large group. We had 70 people there, and I think Congressman Wilson broached it to me first, and I am sure she said something about it, or maybe they were together at the reception.

Senator TUNNEY. Do you recall if she was at the supper?

Mr. GENEEN. Was she?

Senator TUNNEY. Was she?

Mr. GENEEN. Yes, I believe she was.

Senator KENNEDY. Would the Senator yield on that?

Could you tell us how long Mrs. Beard has worked for you?

Mr. GENEEN. I think, Senator, she has been with us about 10 years.

Senator KENNEDY. Ten years?

Mr. GENEEN. That is correct.

Senator TUNNEY. Is she a close friend of yours?

Mr. GENEEN. No, when you say close friend, I think I would like to say she is an employee of the Washington office, and when I come down here to go visit somebody in Congress, it may be one meeting that she has set up, she makes for me, she may sit outside, or in some cases she might sit inside, the meeting. One or two occasions we have had lunch with the Congressman or something because she has to pick up the job and carry on. In a sense it is a little different relationship from people—you don't say, you wouldn't say, it is a close relationship.

Senator TUNNEY. Have you ever had a social relationship?

Mr. GENEEN. Not a social relationship in the sense you are using. Sometimes I might be at some function that she was at, and certainly I would call that a social situation, but it wouldn't be a social situation vis-a-vis myself and Mrs. Beard.

Senator TUNNEY. Can you explain—you have read the memo, I assume?

Mr. GENEEN. I have.

Senator TUNNEY. Can you explain the familiarity with which she refers to you? [Laughter.]

Mr. GENEEN. I think you could explain that better, Senator, if you knew Mrs. Beard. That is probably the lightest thing she might call people.

Senator TUNNEY. Well, we all might have a loud mouth.

Mr. GENEEN. I think that is the lightest thing she spoke about people. She has a loud way with her. She is a daughter of an Army colonel, she grew up in the Army, and I think she is pretty well known for her plain talk; and while I read this with some amusement so far as that particular part is concerned, I don't take any umbrage at it because I know exactly how she talks.

Senator TUNNEY. Have you ever talked to Mrs. Beard at any time since Mr. Anderson called this to the attention——

Mr. GENEEN. No, I have not. I have not seen her or talked to her.

Senator TUNNEY. Are you aware of any public relations or executive people coming down and shredding documents?

Mr. GENEEN. I am aware of that, Senator, and I would like to refer to it. I don't know who came down or who they were. I really don't know any of the details of it other than the fact, as it was reported in the press, and I talked to our counsel. I know that some, or at least I am told that there were some, kind of documents that were shredded. I am satisfied, and I will get a full report and be glad to turn it over to the committee, that this was probably more a reaction to the feeling that our files were suddenly opened to the public or something, and certainly not any kind of an action to, you might say, prevent a review of our files by any legitimate agency, and I will get a report from our counsel of what actually happened, and I have no hesitation in turning it over to the committee.

Senator TUNNEY. Do you have any idea when that report is going to be prepared?

Mr. GENEEN. I have not, but I can get it.

Senator TUNNEY. It would be helpful.

Mr. GILBERT. Excuse me just a moment if I may.

Senator TUNNEY. I think he is doing pretty well.

Mr. GENEEN. I made it clear when I answered the question, I don't know who came down or what happened.

Senator TUNNEY. You have been very candid.

Mr. GENEEN. Beg pardon?

Senator TUNNEY. I said I thought your answers have been very candid.

Mr. GENEEN. I wanted to be direct, Senator, because I don't know anything about it from what I said.

Senator TUNNEY. I can understand being the head of a very large corporation you wouldn't have specific knowledge.

Mr. GENEEN. This has an implication that bothers me. This particular case I was not around and didn't know anything about it and so I didn't.

Senator TUNNEY. Can you tell me and the committee when you would have that report? Would you, for instance, have it by tomorrow?

Mr. GENEEN. I can't tell you because it was our internal counsel doing it and I will have to get hold of him and ask him. But you have some objection—I presume I will be on tomorrow.

Senator TUNNEY. Is Mr. Aibel here? Aren't you the counsel? Can you tell us when it will be ready?

Mr. AIBEL. I am sorry, I don't know but I will be able to tell you by tomorrow when it will be ready.

Senator TUNNEY. I just wonder, Mr. Geneen, if you will tell us how long the investigation has been going on generally?

Mr. GENEEN. Which investigation?

Senator TUNNEY. Of the shredding of the documents.

Mr. GENEEN. I don't know. I presume since we first learned of it.

Senator TUNNEY. If it would be possible to have some interim report by tomorrow it would be most helpful, because I think the most tragic aspect of this whole case is that so many reputations are involved, and if there are a series of canards, and if this memo is totally false, it is a terrible thing that so many people have been implicated, and I think that inasmuch as we have had statements made to this committee which create the grounds for suspicion, such as document shredding, that it is important that we have as much information as possible during the time the appropriate witness is on the stand on points over which he has jurisdiction, supervision, or special knowledge, and in this particular case the report on document shredding, inasmuch as you are the head of ITT, would be most appropriate to have here in the time of your testimony.

Mr. GENEEN. Senator, we will undertake to try to have a report to you tomorrow. And I would like to add one other thing. I am sure, as I have already said, that any action that was taken was more a reaction to what was happening, and part of that reaction. I am sure, was worry about subjecting people to exactly the kind of character assassination thing you are talking about if our files were indeed open as they seemed to be to all kinds of people.

Senator TUNNEY. I have taken too much time, I am sorry.

Senator KENNEDY. Could I just ask you one question? There has been a lot of comment about Mrs. Beard, Mr. Geneen. Would you have kept her on the payroll for these 10 years if she had been unable to perform the job?

Mr. GENEEN. Well, I think the answer to that, Senator, is pretty obvious, we would not have. But I said she had been with us for 10 years, and, as far as I know, up until at least this last problem, and I would also like to add right there that I think it would be well to

withhold, and I will, my judgment until she has had a chance to explain this memo or whatever the circumstances are. We don't know whose memo or what the problem is. But in all that period of time as far as I know she did her job well, and I would have no reason to believe that there was anything other than that in the performance of her work.

I do think, and I, of course, read some of the testimony, including some comments which I was not aware of, by a doctor, this is a pretty stressful occupation, perhaps particularly for a woman, I don't know. She has five children and it might well be the time has come when it is getting to be a kind of difficult kind of assignment for her. I don't know, this may well be the forerunner of what may be the case, but I say I am not making an apriori judgment. I have no reason to believe she was not a good employee. It is obvious she is sick today and I don't know what else obviously might be wrong and I think under these circumstances I am going to withhold it.

Senator KENNEDY. She is today? What about last May 12?

Mr. GENEEN. Last May 12, so far as I know, what I saw of her, she was just her usual self is all I can say.

Senator HART. I have been asked to suggest that in the study on shredding that it include a report on whether files of individuals not direct employees of ITT but at one time or another consultant to ITT have been reviewed and any items shredded.

Mr. GENEEN. We will look into it, sir.

Senator HART. We will recess to resume at 10:30 tomorrow. (Whereupon at 5:50 p.m., the committee recessed to reconvene on Thursday, March 16, 1972, at 10:30 a.m.)

RICHARD G. KLEINDIENST

THURSDAY, MARCH 16, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 222S, New Senate Office Building, Senator Edward M. Kennedy, presiding.

Present: Senators Kennedy (initially presiding), Eastland, Hart, Burdick, Tunney, Hruska, Fong, Scott, Cook, Mathias, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

Senator KENNEDY. The hearing will come to order.

The committee will be in order.

The Senator from Nebraska?

Senator HRUSKA. Mr. Geneen, you indicated that Sheraton had given \$100,000 to the San Diego Convention and Tourist Bureau and then pledged an additional \$100,000 if needed and matched—it would have to be matched as I understand it?

TESTIMONY OF HAROLD S. GENEEN, PRESIDENT, INTERNATIONAL TELEPHONE & TELEGRAPH CORP., ACCOMPANIED BY PHIL E. GILBERT, JR., ATTORNEY

Mr. GENEEN. That is correct, sir.

Senator HRUSKA. You further stated that counsel had advised you it was an ordinary and necessary business expense and, therefore, tax deductible.

Further, you mentioned that the opening expenses of the Waikiki Sheraton were about \$250,000 and similar amounts had been expended at other Sheraton openings.

What is the nature of the promotional openings and how was that money spent on those other occasions?

Mr. GENEEN. I don't have the full detail of that, Senator. Generally speaking, I think it was costs to travel agents to there, to introduce the new hotel, entertainment and things they put on, and special occasions; and it is very customary in the hotel business, both here and abroad. While I didn't mention it, we opened two hotels, one in Copenhagen, one in Stockholm, this last year and normally speaking an expenditure level in Europe would be somewhat lower than what we developed in the States for new hotels. I think each of those ran about \$100,000 apiece.

Senator HRUSKA. How much?

Mr. GENEEN. About \$100,000 apiece; they were a different kind of location. This is a European location but it gives you an idea that this is a very customary approach to the hotel business.

Now, Mr. James, the President of Sheraton, has told me that he expects—he did expect to sort of earn back the bulk of that \$100,000 just in the convention period alone. So I mean in this particular case I would say he had more than his normal chance of sort of breaking even on his expenditure.

Senator HRUSKA. From what you say, I take it this is not innovative or unique as to Sheraton? Other hotels make similar promotional expenditures, do they?

Mr. GENEEN. New hotels, particularly of size—the answer is yes.

Senator HRUSKA. Then what about the normal hotel business and practice to spend promotional money to try to attract to a city conventions that will help to build up their business and fill their hotel rooms, is that in the business policy of Sheraton?

Mr. GENEEN. Certainly is, because the Sheraton chain, I might say, a good proportion of their business is convention and what you would call group business.

Now, I think where you are talking about an opening, it takes on a particularly new significance. Normally, they would be working through the regular convention bureau in the city in which their hotel is and each of these bureaus are sustained and supported by—support the convention bureau in their town and this is an ordinary, sustained operation that goes on year in and year out. I believe the San Diego Convention and Tourist Bureau is just such a normal, continuing, operating business operation, to bring business into San Diego. In this particular case, of course, they are reaching for a national convention of significance and, again, I make the point that our contribution, as the Sheraton contribution, was to this tourist bureau and for a new hotel that is quite proper.

Senator HRUSKA. Well, isn't it true that any city of size has a convention bureau that has for its mission the inviting and the hosting of conventions, and that perhaps the principal mainstay of any financing that such efforts get comes from hotel owners and hotels?

Mr. GENEEN. That is absolutely correct, Senator. I am not an expert in the hotel field but I know that much. I might point out as a matter of information that in the Miami hot l area there is a—I think, it is a \$1 a room and 2 percent that is added on all our room costs which go directly to the Convention Bureau of Miami which is used for the stimulation and attraction of conventions of all kinds. You are right; a very similar case.

Senator HRUSKA. What is that dollar a room on what kind of a basis, an annual contribution?

Mr. GENEEN. I am not the expert on this, Senator, but I believe it is an annual basis—

Senator HRUSKA. There is a formula worked out?

Mr. GENEEN. Yes.

Senator HRUSKA. And the association of hotels agrees to support the convention bureau to that extent and then, of course, for special calls?

Mr. GENEEN. That is right. I think there is a 6-percent tax and an extra 2 percent that is 8-percent loaded on the rooms, as I recall.

Senator HRUSKA. As I understand it, the \$100,000 check, then, to the bureau was considered and was deducted as a business expense on your income tax returns and was not a political contribution?

Mr. GENEEN. Not by any means a political contribution; it was paid to the San Diego Convention Bureau. I think Senator Fong asked yesterday whether there was going to be a lot of additional expenses. I got a report on that this morning. He said that he thought additional expenses might run \$40,000—and coming back to your opening question, about \$10,000 of this would be for press and cocktail parties and \$30,000 housing some travel agents primarily from the Midwest and, as I said yesterday, our most recent information is that they probably will not need the second \$100,000 so it would be well within our scale.

Senator HRUSKA. Now, getting into the field of contributions, political contributions, I note in one of our daily newspapers in this city that has a morning edition, the March 3 Washington Post, "ITT Generosity is Longstanding and Bipartisan," and then they discuss some of the internal affairs of your company and others; it is indicated in the article that ITT executives, including yourself, I believe, have made substantial contributions to political candidates, including, specifically, President Lyndon B. Johnson.

Are the representations and narrations in that article true?

Mr. GENEEN. Senator, I think it must be greatly overstated. I cannot speak for my associates; their individual contributions are their own. My own contributions will probably be—I would consider fairly modest. In a presidential year I doubt if they would exceed \$10,000, in a normal year probably \$2,000, \$3,000, or \$4,000; and this would include probably the usual banquets and dinners and that type of thing.

Senator HRUSKA. You feel you have a constitutional right to do that, do you?

Mr. GENEEN. I do and I don't think it influences anybody, if that is the question.

Senator HRUSKA. When you make some contributions, do you expect—like the one to President Johnson—that the Democrats would treat ITT with special and particular care as a result of the contribution?

Mr. GENEEN. I don't think we have been treated with special care by anybody.

Senator, if I could add one thing. You were talking about the hotel contribution. If I might, it occurs to me they are not—the San Diego Convention and Tourist Bureau is not the only party trying to bring their convention to California. The State of California is taking on significant expense—several hundred thousand dollars, I have heard, and they would be no more able to make a contribution to a political body than we do and so they, of course, are having the same kind of transactions, you might say, a business transaction, for their purposes just as it was from our standpoint from our purposes. I thought that might be of interest.

Senator HRUSKA. I yield the balance of my time—to you, Sam, if you want.

Senator ERVIN. Mr. Geneen, when I started to practice law I discovered that the powers of corporations were defined in their corporate charters. I would like to know what provision of the charter of the Sheraton Hotel Co., authorizes its officers to give away what in equity is the property of their stockholders to those who need money to support political conventions?

Mr. GENEEN. Senator, if I may answer your question, Sheraton looks on any expenditures that they make to promote the patronage in their hotels as an ordinary business, necessary business, expense. I don't know whether you are familiar with what I said in my statement yesterday, but in our experience, and in the Sheraton's own experience and normal history, when they have a new hotel to open they spend what would be considered a substantial amount of money on what they call opening promotional expense; it has a term in the trade; it is called preopening expense, and it is treated in a rather peculiar manner, as I mentioned yesterday.

It is amortized over 50 months as a matter of sort of spreading it out through the operating returns which gives you the impression quite properly that this is considered by them as rather an initial and promotional company expense.

Now, in the case of the San Diego Convention and Tourist Bureau, which is a normal operating convention bureau in the town of San Diego, whose job is year around to bring conventions, and if they were trying to bring any kind of a convention there where we had a brandnew hotel coming in with a very dominant situation, two other hotels, we would from a standpoint of an ordinary and good business expense use that as a promotional expense for our new hotel, and hopefully, as Mr. James, the president, has expressed, earn the bulk of the \$100,000, at least the first 100; I don't think we will need the second back on the convention itself. If he did not do this, he would spend it on some other kind of matters to promote it.

Now, our impression is the TV time and daytime coverage that will take place there if it is a Presidential headquarters and I don't know whether I emphasized that enough—that was a condition of the \$100,000, that we would consider this a very fine, ordinary, and necessary business expenditure, and it would not be a special thought from charter we were about to give some money to the Republican National Committee which seems to keep coming out in the press. I would make a comment if they were going to hold a convention in Chicago and we gave money to San Diego, that would be a contribution. Here it is a business operation. Do I answer clearly for you?

Senator ERVIN. I just wonder how long it would take the hotel facilities that Sheraton has in San Diego to cover the cost of underwriting the Republican National Convention to the extent of \$400,000?

Mr. GENEEN. Senator, let me correct that number again. The telegram which we sent is in writing from the Sheraton chain, is to the San Diego Convention and Tourist Bureau, and it is for \$100,000, conditional on our hotel being the Presidential headquarters. It does offer to match \$100,000 more if it is matched and needed. I am told it probably will not be needed, but there is no \$400,000 figure in our commitment and that is the only and total commitment we have.

Senator ERVIN. Any statements that have appeared in the press or have been made otherwise to the effect that Sheraton Hotel Co.

agreed to underwrite the convention in excess of \$200,000 is incorrect, then?

Mr. GENEEN. That is incorrect. As I said yesterday, we had some informal, enthusiastic discussion but not a commitment; it was sort of in the area of what can we do and when we sat down and figured out what we can do, as the point you raised, as an ordinary and proper business expense, that decision was made by the president of the Sheraton chain, and he says this is what is reasonable to me, and that is what our program covered.

Senator ERVIN. How long would it take for the hotel facilities in San Diego to recover the expenditure of \$100,000 or \$200,000?

Mr. GENEEN. Well, he made an estimate that he hoped to recover the whole \$100,000 or the bulk of it during the convention itself and, of course, of the advertising that we would get would be applicable not only to that new hotel but also, you know, we have a worldwide chain of hotels, Sheraton Hotels, and the logo and the trademark and all of the TV coverage and everything would be—I couldn't put a figure on it, but I think if you figured it for \$100,000, you could buy less than 3 minutes of network time, and if you are going to have a lot of network time emanating from here, it would be worth—

Senator ERVIN. I am constrained to say you got a whole lot more than \$100,000 or \$200,000 in advertising from this.

Mr. GENEEN. I hope it results in people using the hotel. [Laughter.]

Senator ERVIN. I just wonder, though, whether Democratic stockholders approve of a hotel chain financing Republican conventions?

Mr. GENEEN. Mr. Senator, I wish you would not say we are financing the Republican Convention.

Senator ERVIN. Underwriting it, if you prefer that word.

Mr. GENEEN. I understand it, sir, but literally we are authorizing and working with the convention bureau in bringing a convention in town—I will make it simple—whether it is the Roadbuilders of America or the Democratic Convention, if it falls in with our plan, we would be very happy to help the San Diego—

Senator ERVIN. I think from what I consider to be the financial state of my party that whatever you give you could charge off to charity. [Laughter.]

Mr. GENEEN. I think we want to stay with business transactions.

Senator ERVIN. That is all.

Senator KENNEDY. Senator Cook?

Senator COOK. Speaking of Republicans and Democrats, how many Sheraton hotels do you have in Miami?

Mr. GENEEN. In Miami we manage one and we own a fairly small one.

Senator COOK. So you have two?

Mr. GENEEN. Two, that is correct.

Senator COOK. How many rooms do you have in those?

Mr. GENEEN. I would say at the moment we probably have—we have one large hotel, the Four Ambassadors, which they have been converting a number of the towers and suites to offices, so I am not sure what the residual is at the moment, so I am going to have to guess for you, Senator, but I would guess we have something like 300 rooms in the area.

Senator COOK. Has there been any contact from the Democratic National Convention Committee or the Miami Convention and

Visitors Bureau for a contribution from your corporation on the basis of 300 rooms that you know of, or would you not have that information?

Mr. GENEEN. I don't know of anything other than the normal, you might say, room charge and \$1 a room, I think it is, 2 percent, that we ordinarily would do as part of the Miami Convention Bureau.

Senator Cook. In other words, you know of no contact that has been made by the convention bureau for additional funds because of the cost or expenses of a national convention?

Mr. GENEEN. I don't know of any and I would point out that the significant difference is here, Senator. In San Diego we are opening a brandnew 500-room hotel. We also have an additional 500 rooms which makes it 1,000 rooms in this location. We obviously, with that setup, would be a great deal more dominant in the San Diego area plus introducing a new hotel and we are committed to the port authority to add another 200 rooms to that same new hotel.

Senator Cook. Before the convention?

Mr. GENEEN. No; the other 200 rooms would be added before 1976, I think, is the figure. So all I am trying to say is that we have a significantly different interest both in our size, our dominant position, and the fact that it is a brandnew hotel that is opening.

In Miami, you might say comparatively we would be a very small factor in the total hotel supply down there.

Senator Cook. In regard to a national convention, it would be on every evening during the course of the convention, obviously, and I would assume that television coverage would come from either one or both of your hotels. Also I would assume that rostrums would be made available with your emblem on the front of it so that would go out all over the United States; is that correct?

Mr. GENEEN. I am not a hotel operating man, Senator.

Senator Cook. I am not, either.

Mr. GENEEN. But I am going to guess they would take every advantage they could find to get the Sheraton crest up there and somehow or other it would get on television and we would be hearing about it.

Senator Cook. I know we have a small facility in our community commonly referred to as Churchill Downs and I know that their organization fights very hard to get major conventions into Louisville during the season and they find it very profitable to allow people to go to the racetrack and not pay their way in so that they can secure the benefit of that particular percentage of profit that comes by reason of every bet that is made at a window. So, I think probably there is a great deal to what you say.

Mr. Chairman, if I may just take a minute, I have a letter here I would like to read. I don't particularly look forward to reading it but I really ought to and ask that it be put into the record.

It is a letter from Mr. Jack Anderson and was delivered to my office last evening. It says:

Dear SENATOR. I am writing in response to the statement you made March 14 before the Judiciary Committee concerning the relationship of Dita Beard my secretary and myself.

Senator Cook. I would like the record to show that I expressed that in an executive session and not before the full committee in a public hearing.

Your version of events is so wildly inaccurate that it is difficult to imagine how you got the facts so confused. Because I want to believe that you are a serious and sincere man, I shall assume that your statement was an honest mistake and not a bold-faced lie.

There are the inaccuracies in your statement:

1. Dita Beard and my secretary are not close friends as you assert. They are not friends at all. They met on one occasion.

2. They have never met for drinks in the lounge of the Sheraton-Carlton Hotel as you said they did "often".

3. Mrs. Beard did not give the party at the Sheraton-Carlton as you say she did. The party was a dutch-treat affair organized by the resident manager of the hotel.

4. I was not the master of ceremonies at the party as you say I was. I dropped in for a few minutes and left immediately.

5. Dita Beard is a stranger to me, despite your assertion to the contrary. I have no recollection of ever meeting or even speaking to the woman.

You have expressed great anguish about information pertaining to the current Judiciary hearings becoming available to some members but not to others. Therefore, I trust that you will immediately read into the record of the hearings this letter and the two sworn affidavits which I enclose. Certainly, both your sense of fairness and your avowed concern that all members have the same information would dictate that you do this. Since you read your statement out loud, I request that you also read aloud my letter and the affidavits rather than simply submitting them for the record.

Senator Cook. The affidavits merely affirm what is in the letter. I would say, Mr. Chairman, I, in all fairness, if I owe Mr. Anderson an apology, I certainly would extend it to him. But, I will submit affidavits during the course of these hearings. Also, I would like to submit now for the record a picture taken on that occasion which shows Mrs. Dita Beard with Mrs. Beard's daughter, and son, and the gentleman for whom the party was given, and submit that for the record. And also I will submit for the record the presentation that was made to the gentleman in question on his retirement, the gentleman that Mr. Jack Anderson said that he, as I quote from his affidavit—he went to this party for the gentleman named Bill because "he was an avid reader of my column."

I assume from that statement that he did not know the gentleman in question either but on the presentation that he made to him it says on it, "To the source of the White House papers, Jack Anderson." I am not quite sure that is the kind of a signature you would put on a presentation to a gentleman that you didn't know.

I have read his letter into the record as he requested. However, I also submit for the record the two photographs which I have just talked about and hope that I will be able to have other affidavits before these hearings are over.

Senator KENNEDY. Would the Senator yield?

Would you also make a part of the record the memorandum which you used at the executive session?

Senator Cook. It was a statement that I released from my office to the press. But I will submit it for the record I did not make it part of the record originally. I have not made it part of the record, but I certainly will now. If it is ultimately untrue, I will apologize for those portions which cannot be proved by affidavits.

Senator KENNEDY. I think, since we are putting Mr. Anderson's response in, it would be useful to have the memorandum.

(The material referred to follows:)

STATEMENT BY SENATOR MARLOW W. COOK

On this past Thursday, when Jack Anderson first appeared before the committee to testify, he made the following comment as part of his prepared opening statement:

"We hold no brief for Dita Beard. Investigative reporters and lobbyists who operate behind the scenes for major corporations are hardly natural allies."

Please bear in mind that this was not a casual remark, but rather is part of Mr. Anderson's opening statement, which was a very carefully prepared and written document. We have seen during the last 2 days of hearings that Messrs. Anderson and Hume sometimes will meekly excuse portions of their prior testimony on the basis of "mistake" or "poor choice of words" when confronted with evidence that they had misstated or distorted facts. However, such excuses would not be applicable to the statement I have just quoted.

Thus, the impression was clear—Anderson and Company are not friends or associates of Dita Beard—such a relationship would be unnatural.

This impression was even reinforced later in the day, when Mr. Hume stated:

"As my boss pointed out in testimony, investigative reporters and lobbyists operate backstage in Washington and are not natural allies."

With this background, I would like to share some facts that just came to my attention:

Dita Beard and another woman quite often met for drinks in the afternoon at the lounge in the Sheraton-Carlton Hotel at 16th and K Streets. Her drinking companion was her close friend Opal Ginn.

Opal Ginn also happens to be a long-time member of Jack Anderson's staff.

Dita Beard and Jack Anderson are not exactly strangers, either. As a matter of fact, just last January 27 from 5:30 on at the Federal City Club of the Sheraton-Carlton Mrs. Beard gave a farewell party for the bartender at the lounge. As the master of ceremonies at that private function she had none other than Jack Anderson.

Now, let's go back to the statements of Mr. Anderson and Mr. Hume. Of course, they will point out that they merely noted that journalists and lobbyists are not "natural allies"—and now will claim they didn't mean to imply that in this particular instance a close relationship did not exist between Anderson and Opal Ginn and Dita Beard. But let's face it—that impression was created, with calculating precision, in order to portray an atmosphere in which there would be no question raised about any such personal relationships.

I bring this to the committee's attention in outrage. It illustrates that these men have been less than candid with the committee, and in my mind it casts doubt on the veracity of Anderson's account of how he obtained the memorandum and perhaps even on the origin and content of the memorandum itself.

I could openly and broadly speculate as to the reasons for this action on the part of Anderson and Hume, but that would serve little purpose at this moment. However, I believe this committee deserves some honest answers to the question.

WASHINGTON, D.C., March 15, 1972.

HON. MARLOW COOK,
U.S. Senate

DEAR SENATOR: I am writing in response to the statement you made March 14 before the Judiciary Committee concerning the relationship of Dita Beard, my secretary and myself.

Your version of events is so wildly inaccurate that it is difficult to imagine how you got the facts so confused. Because I want to believe that you are a serious and sincere man, I shall assume that your statement was an honest mistake and not a bold-faced lie.

These are the inaccuracies in your statement:

1. Dita Beard and my secretary are not close friends as you assert. They are not friends at all. They met on one occasion.

2. They have never met for drinks in the lounge of the Sheraton-Carlton Hotel as you said they did "often."

3. Mrs. Beard did not give the party at the Sheraton-Carlton as you say she did. The party was a dutch-treat affair organized by the resident manager of the hotel.

4. I was not the master of ceremonies at the party as you say I was. I dropped in for a few minutes and left immediately.

5. Dita Beard is a stranger to me, despite your assertion to the contrary. I have no recollection of ever meeting or even speaking to the woman.

You have expressed great anguish about information pertaining to the current Judiciary hearings becoming available to some members but not to others. Therefore, I trust that you will immediately read into the record of the hearings this letter and the two sworn affidavits which I enclose. Certainly, both your sense of fairness and your avowed concern that all members have the same information would dictate that you do this. Since you read your statement out loud, I request that you also read aloud my letter and the affidavits rather than simply submitting them for the record.

Respectfully,

JACK ANDERSON.

AFFIDAVIT OF JACK ANDERSON

Last January 27th, at the request of my secretary Opal Ginn, I stopped as I was leaving my office for the day at a party at the Sheraton-Carlton Hotel, which is located across the street from my office. Miss Ginn had asked me to drop in because Bill, a retiring Carlton waiter who was the guest of honor, was an avid reader of my column. While my wife waited in the car outside, I went into the party. At the request of Mark Kirkham, resident manager of the hotel, I made a presentation to Bill, posed for a photograph and immediately left. I was there less than 10 minutes. If Dita Beard was at this party, I was not aware of her presence. Moreover, I have no recollection of ever meeting or even speaking to Mrs. Beard at any time.

JACK ANDERSON.

DISTRICT OF COLUMBIA ss:

Subscribed and sworn to before me this 15th day of March, 1972.

BABETTE L. DENTON,
Notary Public.

My Commission expires: 8/14/74.

AFFIDAVIT OF OPAL GINN

Mark Kirkham, the resident manager of the Carlton Hotel asked me to attend a Dutch-treat farewell party on January 27th for a veteran Carlton waiter who was retiring. He told me there was no money available in the hotel's budget, so everyone would have to buy his own drinks. I agreed and asked Jack Anderson to stop by because Bill, the waiter, was a fan of the column. At this party, I met Dita Beard for the first and only time in my life. I had never spoken to her before or since with the exception of a brief telephone conversation when she called the office in recent weeks to reach Brit Hume in connection with the story on her memo. Moreover, when I met Mrs. Beard, she said this of Mr. Anderson: "Your boss is a son of a bitch and I wouldn't touch him with a ten-foot pole."

OPAL GINN.

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this 15th day of March, 1972.

BABETTE L. DENTON,
Notary Public.

My Commission expires: 8/14/74.

Senator KENNEDY. Mr. Geneen, you, in response——

The CHAIRMAN (presiding). Wait just a minute, please. The Chair is going to appoint another member of the subcommittee to interview Mrs. Beard. It will be Senator Burdick.

Senator KENNEDY. You indicated the amount of the ITT commitment was \$100,000 with a possibility for an additional \$100,000; is that correct?

Mr. GENEEN. It was \$100,000 conditioned that it be Presidential headquarters, Senator, plus an additional \$100,000 to match what they would be putting up—\$200,000 at least.

Senator KENNEDY. So do I understand you that the most the commitment would be would be \$200,000?

Mr. GENEEN. At the most if those conditions were met.

Senator KENNEDY. Where do you think everyone, like Congressman Wilson, who is very much involved in the negotiations, as I understand, got the idea of \$400,000?

Mr. GENEEN. Well, I think I covered that, Senator, in the statement yesterday. I said this thing was brought up to my first knowledge—we were out during our annual meeting at a party we gave, and dinner party, for about 70 people, and we were enthusiastic about it, but I didn't figure any kind of a figure was a commitment. He was talking in terms of the use of the hotel rooms, which may not be otherwise used; and we talked in general terms. I don't remember a figure of \$400,000 by any means. But in any event, before the site selection made its bid for the convention, we sent a telegram to the San Diego Tourist and Convention Bureau, care of Congressman Wilson, which spelled out clearly what our total commitment was, and it was in writing and that is the only commitment that we have.

Now, I appreciate there has been some mixup on it, misstatement, but that is the only commitment we have and it was given in writing before the site selection was made.

Senator KENNEDY. Why was Congressman Wilson—why was the telegram sent to him?

Mr. GENEEN. He asked to have such a telegram sent to the bureau in care of him—it was not sent to him—in order to have it at the meeting, I presume, and I am assuming now because I don't know what he was going to do with it, where they were going to select the site.

Senator KENNEDY. Was he involved in the negotiations, then, between ITT and the selection committee?

Mr. GENEEN. We had no—

Senator KENNEDY. Was he the go-between?

Mr. GENEEN. We had no negotiations with the selection committee at all. We undertook to make a contribution to the convention bureau, and that is whom the check has been made out and that is to whom the telegram is addressed, and he asked to have a copy of the telegram sent to him before they went out there and it was sent to the convention bureau, care of Congressman Wilson; that is his district and he is naturally interested in it.

Senator KENNEDY. Do we have a copy of the telegram?

Mr. GENEEN. I think we said we would make it available yesterday, and if it hasn't been we can.

Mr. GILBERT. There are several here, Senator.

Mr. GENEEN. And the check is made out in the same manner.

(The telegram referred to follows:)

JULY 21, 1971.

To: San Diego County Convention and Tourist Bureau.

C/o: Congressman Bob Wilson, 2235 Rayburn House Office Building, Washington, D.C.

As you know Sheraton Corporation of America will have, with the completion of the Sheraton Harbor Island Hotel, a 700 room hotel being located on land owned and created by San Diego Port Authority, three hotels in San Diego. In consideration of the naming of the Sheraton Harbor Island Hotel as Presidential headquarters hotel in conjunction with its opening at the time of the convention; and as part of the general community effort to establish San Diego as a convention center by bringing the 1972 Republican National Convention to the City, Sheraton is prepared to commit a total of \$200,000 to the Bureau for its promotional activities, if San Diego is designated as the convention site, on the following basis: \$100,000 in cash to be available to the bureau on August 1, 1971 and a

balance to be paid as a matching contribution when the bureau has raised an additional \$200,000 in cash from other non-public sources.

HOWARD JAMES,
President, Sheraton Corporation of America.

Senator KENNEDY. Now, Mr. Geneen, was this a personal pledge on your behalf, in behalf of the corporation; was it?

Mr. GENEEN. That is a question, Senator?

Senator KENNEDY. Pardon?

Mr. GENEEN. That is a question?

Senator KENNEDY. Yes.

Mr. GENEEN. Let me say I can make no personal pledge on behalf of the corporation. The corporation can only carry out ordinary and necessary business, and as I said a moment ago, the decision on what we would do and what was reasonable to do and what was a good business investment to do was made by Mr. James, the president of the Sheraton chain. He made the decision and that is what is in our telegram and that is the only commitment we have.

Senator KENNEDY. I see. Was that decision made out at the May 12 meeting?

Mr. GENEEN. No, sir; this was made, I would say, shortly or a reasonable period, I don't remember the exact date, before the telegram was sent, putting in writing what our commitment was.

Senator KENNEDY. What sort of procedure is followed in this? Do you get the executive committee to go and say, "Shall we give the \$100,000 to the Site Selection Committee?" or what is the procedure that is followed? Do you make that decision, or how is it made?

Mr. GENEEN. Senator, let me correct this again. We have given no money to the Site Selection Committee, no money to the Republican National Committee. We gave a check to the San Diego County Tourist and Convention Bureau.

Now, coming back to what special procedure, if any, Sheraton has within its own province as ordinary and necessary business expense. to make these kinds of expenditures when they open new hotels, and they do this frequently and they have done it in the past and it is considered by them normal operating procedure, and it is a decision they would ordinarily make without reference to any special approval or procedure, as I mentioned earlier this morning, they have a small amount of additional money they expect to return but the bulk of their promotional expense will be in this area. They think it will be an outstanding opportunity to get publicity for the hotel and, on top of this, they expect to earn back most of the \$100,000 which probably will be the total amount from the convention itself.

Senator KENNEDY. Do you have the authority yourself to make that commitment on behalf of the corporation?

Mr. GENEEN. I didn't make the commitment on behalf of the corporation. The telegram is from the Sheraton Corp., and they have the authority to make any normal and ordinary business decisions.

Senator KENNEDY. The reason I am asking that is, as you probably are well familiar, according to the San Diego Evening Tribune, Congressman Wilson said the agreement was made at a dinner party last May 12 in San Diego with a group including Wilson, Geneen, and Howard James.

Mr. GENEEN. Howard James, who is the President of the Sheraton, left quite early that evening. I don't think he was part of the conversation at that particular time.

Senator KENNEDY. That is not an accurate comment?

Mr. GENEEN. I don't believe that point is accurate. We did have some conversations and, as I mentioned before, they were tentative or talking figures which were lower than that figure, but none of them were looked upon by me, at least, as a commitment of any kind at this particular point. No one had any knowledge; that was the first time I had ever heard of it; no one had any assurance or any belief or anything else. It was just an idea and we sent the telegram—we sent specifically and purposely before the site selection was made, based on what the Sheraton chain believed was a proper expenditure and that was sent to the convention bureau, care of Wilson, so they would have an accurate, clear—we were aware of some of these statements in the newspaper—an accurate, clear statement of what our actual obligations were. They are as I described it.

Senator KENNEDY. Is it usually your procedure that you send a telegram when you try to attract business to a particular hotel; you put it in care of the Congressman or the Senator whose district it is in?

Mr. GENEEN. Let me go back to two points on that. This was not a usual hotel situation. This was a brand new hotel and presumably had an opportunity to get some worldwide exposure at very low cost and probably recover most of it back. In this particular case we had been asked by Congressman Wilson to send the convention bureau a statement of our pledge, care of him, but to them, identifying clearly what our pledge was, and that is what we did.

Senator KENNEDY. Do you remember whose idea it was to make the request of Sheraton?

Mr. GENEEN. I think Congressman Wilson raised it. It is in his district.

Senator KENNEDY. So he asked you, in effect. How did that go—did he ask you for a commitment or for ITT Sheraton to make a commitment to the site selection committee or San Diego Tourist Bureau?

Mr. GENEEN. Mr. Senator, it was a very general conversation in the evening after we had our annual meeting; we had 70 people at the dinner party and it was more along the lines would you think it is a good idea to see if we can get the convention to come to San Diego. We said we thought it would be a great idea, and we still think it is a great idea from the standpoint of our hotels. But there was nothing specific. This was not a business meeting or a legal contract that was being drawn up. It was just a casual conversation at that particular time.

Senator KENNEDY. But the reason I raise it again, it was in the San Diego newspapers saying that Wilson said an ITT contribution was discussed and Geneen decided on the spot to pledge funds.

Mr. GENEEN. I said we would be an enthusiastic supporter; but what I call a pledge—

Senator KENNEDY. A what?

Mr. GENEEN. Enthusiastic supporter of the idea of the site of San Diego, on bringing such a convention into the town if we could have

a presidential headquarters and so on, but I don't think I pledged anything and, as I said before, I am in no position to pledge anything.

Senator KENNEDY. Mrs. Beard was at that meeting?

Mr. GENEEN. She was at that dinner, yes.

Senator KENNEDY. I know it was some time ago. Do you remember who was pressing to get the convention to go to San Diego?

Mr. GENEEN. Well, it was raised with me by Congressman Wilson. I wouldn't say he was pressing it. He asked what our interest would be. We said we would be an enthusiastic supporter. I think we should be.

Senator KENNEDY. But the comment that Mr. Wilson made, that Mr. Geneen decided on the spot to pledge funds, is not a fair representation of what you remember of that meeting?

Mr. GENEEN. I think that is an overstatement of our enthusiasm.

Senator KENNEDY. What about—continuing, “‘Geneen first pledged \$300,000 and later made it \$400,000,’ Wilson said.”

Mr. GENEEN. I don't think we could pledge anything at that point.

Senator KENNEDY. He, nonetheless, is the fellow who wanted it to go to San Diego?

Mr. GENEEN. Well, he is the Congressman and he exhibited that much interest and he was interested in seeing what could be done. He had nothing to suggest at that point other than it was a possibility and we be a supporter. But I think the key thing is, Senator, we sent him a telegram specifically outlining in writing, that is, Sheraton sent it, exactly what our commitment was before the site selection was made.

Senator KENNEDY. That was on July 21; is that right?

Mr. GENEEN. I believe that is the correct date, sir.

Senator KENNEDY. And this meeting was in May?

Mr. GENEEN. Well, this conversation was in May. It wasn't exactly a meeting.

Senator KENNEDY. You didn't have any other than what was printed in that telegram, any oral kind of an agreement in terms of what ITT-Sheraton was prepared to do, what ITT was prepared to do?

Mr. GENEEN. I don't think we had any agreement prior to the telegram. That was our commitment and that is why we sent it and why he asked for it. We had some degree, that evening, of conversation; there may have been other conversations that I am not even aware of, but this boiled it down specifically to our commitment in writing before the site selection was made.

Senator KENNEDY. And there was no other kind of commitment beyond that which is—

Mr. GENEEN. we have no other commitment beyond that.

Senator KENNEDY. No, other understanding with the parties?

Mr. GENEEN. No, sir; none at all.

Let me put it clearly, and I think I said that in my statement yesterday, this is the complete and only commitment of ITT-Sheraton, ITT or any of its subsidiaries.

Senator KENNEDY. Where do you think Mr. Wilson gathered that idea that this was \$400,000?

Mr. GENEEN. Well, we had some conversation and I don't think we were talking about a figure that high. He was talking about some

trade, the theory being the rooms might be empty and we might use—in the hotel field generally they figure that the actual cost of an unused room is about 30 percent of its market price; in fact, some advertising is bought exactly on that basis so if you were talking about trade figures you would divide it by three to come down to actual costs, but, actually, when we sat down and figured out, that is, the Sheraton did, whether it made any sense to talk in terms of trade, they decided that it would be administratively very difficult to operate in any manner like that.

They also had, that is, we, the company, had a legal opinion from outside counsel that said this would be much better to keep this strictly in cash, so we made our commitment, that is, Sheraton made that commitment exactly on that basis.

Senator KENNEDY. You got counsel on whether you could make a contribution of other services, did you?

Mr. GENEEN. Yes, sir; we had outside counsel.

Senator KENNEDY. Do you remember who that was?

Mr. GENEEN. Yes, I do. Gilbert here.

Mr. GILBERT. Me.

Senator KENNEDY. So there were no other services that were indicated that evening which would be available to either the San Diego Tourist Bureau or to any other party?

Mr. GENEEN. No. I will say it more completely than that, Senator. We have absolutely no other commitment except what is contained in that telegram.

Senator KENNEDY. Now, can you remember Mrs. Beard's role during the course of these discussions or conversations?

Mr. GENEEN. I don't know that she had any particular role, at least I didn't recognize any. She was somewhat enthusiastic about trying to get the convention to come there and that is all I recall.

Senator KENNEDY. Why was she interested in the convention going there?

Mr. GENEEN. Well, I suppose like any of us, I am interested because it is part of the company and if it is going to help the hotel I am for it. I suppose she had the same feeling.

Senator KENNEDY. She had no other kind of instructions about the convention going to San Diego?

Mr. GENEEN. Let me say that that evening was the first time I ever heard of it.

Senator KENNEDY. Well, that isn't it. That might have been the first time you heard it. Do you know now whether she had any other kind of responsibilities?

Mr. GENEEN. Not to my knowledge. She is part of our basic public relations area.

Senator KENNEDY. You would know, wouldn't you, if she did?

Mr. GENEEN. I might or might not. It wouldn't be that important necessarily. I started to say as part of our basic public relations function. Obviously, anywhere that you can improve the relations of the company that should be part of your job.

Senator KENNEDY. Would it surprise you that Mrs. Beard told Dr. Liszka she had been working on the arrangements for the convention since January, as he testified?

Mr. GENEEN. Well, I heard something of this. I didn't know about it and, let me say, I had not heard about it nor did I know about it.

Senator KENNEDY. Would it have surprised you to know she was going places with the Site Selection Committee?

Mr. GENEEN. I didn't know that now.

Senator KENNEDY. Had you talked with Mr. Gerrity about this?

Mr. GENEEN. No; I assumed that it was just an ordinary situation from the standpoint of Sheraton and business expenditure which we would go forward with and nothing more.

Senator KENNEDY. Who would have known about Mrs. Beard's responsibilities? Would that have been Mr. Gerrity?

Mr. GENEEN. Well, she reports to Mr. Merrian. I suppose he would know what she was doing.

Senator KENNEDY. You don't know?

Mr. GENEEN. No; I don't bother with that.

Senator KENNEDY. Were you interested at all, when you were making your commitment to—when ITT Sheraton was making its commitments to—the San Diego Tourist Bureau, about what the feeling of the people in San Diego was about the convention?

Mr. GENEEN. I think, Senator—

Senator KENNEDY. Was that a consideration in the business judgment?

Mr. GENEEN. I think, Senator, the best answer to that was that I was not aware of any feeling and I assume they would be as enthusiastic as we were in the sense that it was a, you might say, a mark of prestige and it would probably bring trade and exposure to the town, which is somewhat of a tourist town and that is why they have a convention bureau.

Senator KENNEDY. Did you try, before urging ITT Sheraton to make this gift, to assess whether the people in that community were really interested in the convention? Was that a part of your —

Mr. GENEEN. Senator, I didn't urge the Sheraton to do anything. I urged them to look at it as an opportunity, which they did.

Senator KENNEDY. What is that? To look at it as an opportunity; is that an urging or not?

Mr. GENEEN. No; I wouldn't call it that. They made their own decision on it.

Senator KENNEDY. They didn't ask you about your recommendations?

Mr. GENEEN. They don't ever ask my recommendations. The way we operate we say it looks very good or something, if we say anything at all. But to come back to the point we made, it was a rather unusual opportunity from their standpoint as well as ours as we looked at it to get a very major exposure for a brand new hotel in a manner that you could hardly do for the sum of money they put up. I would say there are very few opportunities like that. I don't know how to evaluate TV time and coverage and things that come out of a convention like that if you have a Presidential headquarters which is one of our conditions. It seems to me you could easily sit down and evaluate it as worth \$1 million or more; it was a very exceptional opportunity and I am not thinking about who the convention is but what we would get out of it.

Senator KENNEDY. Well, in giving your evaluation to ITT-Sheraton, were you aware of the occupancy rate in San Diego for hotels in August?

Mr. GENEEN. I didn't give them my evaluation. They sat down and figured out what they would normally do to introduce a new hotel, whether this in itself was good or better and made their own decision.

Senator KENNEDY. And, as I understand, from what you said here, all you have said is this looks like an interesting opportunity?

Mr. GENEEN. Well, I don't remember my exact words. I think we would be enthusiastic or something along that line for this and they sat down and evaluated it.

Senator KENNEDY. How—can you tell me this—and we are getting on with the time—how do you go from one point where you are prepared to talk in terms of dollar figures to Mr. Wilson at that May 12 meeting, and at least give him an impression such that he was prepared to make some public comments about it in describing this commitment, to the point where all you are saying is, "Well, this may be a good idea; I am not prepared to say anything more about it"?

Mr. GENEEN. I didn't say it was a good idea. They fully understood what the situation was and they evaluated it and that was our contract that we came up with in writing, so I think it is pretty clear when we got to the point of making a commitment we valued it, what it was worth, and that is the commitment we made and we made no other commitments.

If you are saying, did we have any discussions which were not commitments, perhaps we did, and they were not particularly significant in my mind.

Senator KENNEDY. Tell me about those discussions, about the commitments that you don't think are——

Mr. GENEEN. I don't recall them other than, as I said, on the night of May 12 it was raised and they were talking about possible figures in trade and, you know, I am used to talking in figures and I can be enthusiastic but I don't consider that a meeting or a pledge or anything else. When we finally got to the point of making our pledge at their request it was in writing and it was exactly what I have described.

Senator KENNEDY. And can you tell me, did this come out of ITT-Sheraton on their own, or how did those figures come out if you didn't talk to them about it?

Mr. GENEEN. That is their own calculation of what they would spend.

Senator KENNEDY. You mean, you want us to understand your testimony, you were talking about dollar figures on May 12, and then you went into a conversation with ITT-Sheraton, and all you said to them was this might be a pretty good idea but you are not going to make any judgment, and then out of the blue comes their commitment for the \$100,000 and the additional \$100,000. I mean——

Mr. GENEEN. Well, let me see if I can clear it. I don't think anything was out of the blue. They had to get this hotel finished in time for the convention if they were going to get anything done with it and they were very interested in the convention and the amounts that they were going to pledge were not finalized and while I could talk in figures that is not a pledge; it is a discussion.

Senator KENNEDY. It is not what?

Mr. GENEEN. That is not a pledge.

Senator KENNEDY. You talked figures to them, to ITT-Sheraton?

Mr. GENEEN. I am not talking to them; I am talking about—reference we had in talking with Congressman Wilson. That is not a pledge; it is just, you might say, checking out the parameters of what they had in mind.

Senator KENNEDY. What?

Mr. GENEEN. I say it might be just checking out the parameters of what they had in mind, but in any event it was not a pledge and the decision was made by Mr. James who wrote the telegram and sent it.

Senator HART (presiding). It is my understanding that Senator Cook has had an opportunity for questions.

Senator Hruska?

Senator KENNEDY. Senator Gurney hasn't had an opportunity.

Senator HART. Senator Gurney?

Senator GURNEY. I will pass.

Senator HART. Senator Gurney yields to Senator Cook?

Senator GURNEY. Yes.

Senator COOK. Mr. Geneen, you were asked whether you knew what the attitude of the people of San Diego was about the convention. Were you aware of the fact that the then mayor of San Diego—although it is a nonpartisan position, it is my understanding that he is a registered Democrat—made the remark publicly that he didn't want the convention because Republicans are brown-baggers and they won't spend any money? [Laughter.]

For the record, I want you to know that the mayor was defeated at the next election and there is now a nonpartisan Republican who is mayor of San Diego. [Laughter.]

Just one simple question, Mr. Geneen:

If the Democratic Party had picked San Diego for their national convention, would it have been worth the value of the publicity to the Sheraton Hotel system to have made the same investment to have acquired that convention for San Diego or for the Democrats?

Mr. GENEEN. Let me just qualify the word "investment," with contribution to the local community's convention.

Senator COOK. Investment in the Sheraton system?

Mr. GENEEN. I would say the answer is yes, and I would have to assume the State of California would have taken the same position with the several hundred thousand dollars of cost they are going to contribute to the convention.

Senator COOK. As a matter of fact, if Mrs. Beard was helping to get the convention to San Diego because Sheraton had 1,000 rooms there, that would not be unusual, but it would have been unusual, wouldn't it, Mr. Geneen, if Mrs. Beard were helping my group from Louisville that was trying to get the convention for Louisville because there isn't a Sheraton Hotel in Louisville?

Mr. GENEEN. I would say——

Senator COOK. That would be unusual, wouldn't it?

Mr. GENEEN. It would be unusual because we have no business reason to do it.

Senator COOK. Let me ask you, did your people go over with you what the approximate room rate would be over a 5-day period for 1,000 rooms during the course of this convention and what it would be, conceivably, that they would earn on food and what it would be that they would earn on other enjoyable products that are manufactured

in my State that would be consumed during the course of the convention, and what value they would be to those hotels?

Mr. GENEEN. Mr. James, the president of the Sheraton, is a long-time hotel man and operator and knows his business well and I am sure he made every one of those calculations, including what he called food and beverage.

Senator COOK. Do you think that you might get those figures from Mr. James so that we can have them for the record?

Mr. GENEEN. I will be glad to.

Senator COOK. I just sat here and figured approximately on double occupancy during a convention, because I know what the hotels do in Louisville during the Derby weekend, and, believe me, they get everything you have got and then ask you to sign a check or take your credit card before you leave. But I estimated approximately \$40 a night, taking into consideration all suites and everything else. That would be, for a 5-day period, would be somewhere in the vicinity of \$160,000—some for the rooms alone. Now, what would you assume the daily figure would be for meals and for beverages, as you put it?

Mr. GENEEN. I think they usually figure about 50 percent is a rough rule on the room costs for food and beverages so if you figured \$160,000 it would make it about \$240,000, and if you figured our costs were 30 percent, which is the ratio that I have been given, you would have to say 70 percent of \$240,000 or something on the order of \$168,000 would be our profit.

Now, I am not sure that is Mr. James' calculation, but that is the sort of thing they do in the hotel trade. I think I made the comment that Mr. James expected to earn back the bulk of this in the convention itself and one of the reasons from an administrative standpoint we preferred to put up dash was——

Senator COOK. I wouldn't think it would be any surprise to anybody to consider it would be far more profitable to have a sustained convention of the kind of a national party in San Diego during August than it would to have the usual trade?

Mr. GENEEN. I think that is true, Senator. I think you have got to keep adding in also this factor that we had here, one of the few large, brand new hotels the Sheraton was built and owned—we managed a few new ones that other people have built—so we had a sizable investment in this hotel, some \$20 million by the time it is finished; so beyond the cash profit, if our calculations are right or Mr. James', it was a very large value inestimable in exact amount of what the publicity would be to the Sheraton chain with the television and other things that would be going on in this kind of a convention.

Now, the average convention, of course, does not get this worldwide news coverage. So how do you value this? I can't put a value on it but it must be very high and particularly if we conditioned this on being presidential headquarters.

Senator COOK. In the words of Senator Ervin, it was an investment in the Sheraton system; if it was a Democratic convention it would have been a charitable contribution?

Mr. GENEEN. I can't answer that. We would have welcomed either convention.

Senator GURNEY. Mr. Geneen, there is one point I would like to pursue with you. I don't know whether you have covered it or not, but when Mrs. Beard's doctor was here testifying he touched upon the

fact that she had been to New York after the Jack Anderson story broke and then after she conferred with ITT people in New York she left for Denver. Do you know anything about her visit to New York at this time?

Mr. GENEEN. Senator, I can only tell you what I know. I did not talk to her personally. I believe she came up Tuesday afternoon and was there Tuesday and Wednesday, if my memory is correct. I had turned the entire situation over to our counsel in view of the fact—

Senator GURNEY. What is the name of your counsel?

Mr. GENEEN. Well, our internal counsel, Mr. Howard Aibel.

Senator GURNEY. Howard Aibel?

Mr. GENEEN. Aibel; that is correct.

Senator GURNEY. And he was the one who talked to her?

Mr. GENEEN. I am not sure how he handled it. We also had outside counsel who talked to her independently of ours and I think he is due to make some report at some point on this so you can get the facts. But my understanding is she didn't leave for Denver at our request. She said her doctor told her she should get a rest and we said, "Well, you must keep us informed at all times where you are and be willing to come back if you are needed to testify," and she promised she would do that; and that is all the understanding we had as to her going to Denver. In fact, we didn't know where she went; this only turned up later.

Senator GURNEY. You did not talk to her personally?

Mr. GENEEN. No; I did not.

Senator GURNEY. She was in New York, though, talking to ITT people for 2 days?

Mr. GENEEN. Well, I can't give you the exact times, because I don't know what time she arrived and what time she left, but it was a part of Tuesday and part of Wednesday; that is my memory.

Senator GURNEY. And she talked—you are not sure whether she talked to your house counsel or not?

Mr. GENEEN. I can't tell you. I got a report from our house counsel that he had talked to her.

Senator GURNEY. What did he say the discussion with her was about?

Mr. GENEEN. Well, he said, and I would rather leave this to the testimony which I think will come up, and I think in effect she denied most of the things that were or practically all of the things that were involved, but I have no detailed firsthand knowledge of this and, I think, it would be better if our counsel reported on that.

Senator GURNEY. What was the purpose of her visit to New York to talk with ITT people at this time?

Mr. GENEEN. I didn't speak to her and I assume that they called her up there to inquire into the circumstances of the problem.

Senator GURNEY. Who is they? Who called her up?

Mr. GENEEN. Well, our counsel; I asked him to get into it and probably the head of our public relations department to whom Mr. Merriam reports, and that would be my guess, probably counsel called her up.

Senator GURNEY. As I understand your testimony is your understanding is that the visit was initiated from a request from New York ITT to Mrs. Beard to come to New York?

Mr. GENEEN. Well, I am just assuming that because nobody told me exactly who made the call and how it was handled.

Senator GURNEY. And talk about the Jack Anderson story?

Mr. GENEEN. I am assuming since, under the circumstances, I turned it over to our counsel, it was a natural followthrough.

Senator GURNEY. But you have no personal knowledge?

Mr. GENEEN. No.

Senator GURNEY. And you don't know why she went to Denver instead of returning to Washington?

Mr. GENEEN. Other than repeating what I understood her doctor told her, to get a rest, and we didn't inquire what she was going to do other than we had a commitment to keep us informed where she was and come back when she was needed.

Senator GURNEY. Do you know whether in her visit to New York she was seen by any of your doctors or house physicians?

Mr. GENEEN. I really don't.

Senator GURNEY. Thank you.

Senator HART. The Senator from North Dakota?

Senator BURDICK. Inasmuch as I have not been able to be here to hear the testimony, I will pass.

Senator HART. The Senator from California?

Senator TUNNEY. Thank you, Mr. Chairman.

Good morning, Mr. Geneen.

Mr. GENEEN. Good morning, Senator.

Mr. TUNNEY. Mr. Geneen, how much is Mrs. Beard paid per year?

Mr. GENEEN. I think her salary is about \$30,000; maybe it is a little less. I don't remember the exact figure.

Senator GURNEY. What is her current status at the moment?

Mr. GENEEN. At the moment she is on—I don't know the exact term but I think, because I haven't inquired, but I would assume it is sort of indefinite leave of absence or equivalent to sick leave.

Senator GURNEY. Sick leave, does that mean she is being compensated?

Mr. GENEEN. Well, she is on sick leave. She is sick; no question about it.

Senator GURNEY. Are there any plans for her future?

Mr. GENEEN. Well, I think I said yesterday that I would withhold any judgment and thought until she has had a chance to testify to this whole problem and I hope it is done promptly; but I think that has a lot to do with what we would think about her.

Senator GURNEY. There is no—

Senator KENNEDY. Would the Senator yield just a moment?

What are you suggesting in that response? If she said it is true, is she out; and if she says it isn't, she is in?

Mr. GENEEN. No, Senator; I think it is fair to say it is so complicated at this point, the woman is quite sick, that I have no thoughts on what—let me say I am not trying to prejudge anything. I think that is a fair answer.

Senator TUNNEY. Will her employment status be dependent upon her testimony?

Mr. GENEEN. Certainly not. We would expect she would tell the truth and I hope she does and clears this thing up.

Senator TUNNEY. To your knowledge, did any ITT officials ask Mrs. Beard to get out of town?

Mr. GENEEN. Senator, I think I have answered that to Senator Gurney over here.

Senator TUNNEY. Well, sometimes if you put a question a different way you get a different answer. I don't think his was quite that question. I don't think Mr. Gurney asked the question that way.

Mr. GENEEN. I am sorry. Let me answer your question, Senator. I know of no ITT executive who asked her to get out of town. I think what I did know or was repeated to me on that basis that she said she had to get a rest and her doctor told her to and we extracted a commitment from her, which she freely agreed to, to keep us fully informed where she was and be willing to come back to testify anytime we wanted her to.

Senator TUNNEY. Did she keep you fully informed?

Mr. GENEEN. No; she did not, and let me say, we cooperated fully with the committee on any information we had as to where we possibly thought she could have gone; and I think the committee records will show that.

Senator TUNNEY. What about the questions that we were getting into yesterday about the document shredding? Did you have an opportunity to elicit from the man who is in charge—I think it was Mr. Aibel—of the investigation, what the status of that investigation is?

Mr. GENEEN. Yes; can I answer that question?

Senator TUNNEY. Please.

Mr. GENEEN. Twofold: I said we would have a report. I said this morning. I have to say that counsel advises me that they will have a preliminary report early this afternoon on the situation. They did work quite late last night assembling the information and I think I would like to correct a misunderstanding of your question and my answer. I did not know anything about what happened—I think I said that yesterday—as to who, if anybody came down here or if anybody—and the report will cover this. But having read the press, I think they must have gotten a little different understanding of what they thought I said.

Senator TUNNEY. Well, I think the testimony that you gave, and we can easily find out from the transcript—

Mr. GENEEN. Surely.

Senator TUNNEY (continuing). The testimony that you gave was that you had been made aware after the fact that document shredding had taken place. I don't think your testimony was that you were aware of it prior to the fact, that you had given some kind of instructions to do the document shredding. I don't think that came out at all. I thought it was that you became aware afterward that such document shredding had taken place?

Mr. GENEEN. Senator, I think the report will cover all of this. I was really referring to the fact that I was aware that somebody came down from New York; I think you used the words "security people." I think I said I didn't know anything about it, but we will make such a report and that report will be made available early this afternoon.

Senator TUNNEY. Thank you very much for making sure it will be available.

As you can well imagine, this is just another factor that adds a cloud of suspicion to the entire matter that is under investigation now and I think that any one of us on this panel is distressed to think that anyone has to come and testify on a matter of this kind, whether

it is a former Attorney General or the Attorney General-designate or whether it is you. I don't think anyone enjoys this investigation.

Mr. GENEEN. Agreed.

Senator TUNNEY. I would like to ask you a question about the San Diego convention. Is there any possibility that you discussed with anyone a commitment of money through the Sheraton chain to the local convention bureau prior to May 12?

Mr. GENEEN. I would like to go back; it is a long question. Are you talking about did I?

Senator TUNNEY. You.

Mr. GENEEN. I did not. I don't recall any conversation about it in any way.

Senator TUNNEY. Did you discuss it or did any member of the ITT executive committee or any official of ITT discuss with anyone, to your knowledge, the commitment of money from the Sheraton chain to the convention bureau in San Diego before May 12?

Mr. GENEEN. You are talking about before May 12?

Senator TUNNEY. Yes.

Mr. GENEEN. I don't know of any.

Senator TUNNEY. Do you have any knowledge subsequent to the development of this investigation which would lead you to believe that such communications were had with officials in California or with officials in San Diego?

Mr. GENEEN. I have no knowledge. I have seen a statement somewhere made that Mrs. Beard had been active but I had no knowledge of it.

Senator TUNNEY. Have you ever checked into it to find out if—

Mr. GENEEN. No; I haven't.

Senator TUNNEY (continuing). If any person was active?

Mr. GENEEN. No.

Senator TUNNEY. Is there any reason for that or you just think it is insignificant?

Mr. GENEEN. Well, I keep coming back to a very simple point that we made our commitment very clear, in writing, and it was very clear that was our total commitment and I think that is our commitment. I don't think anything else is.

Senator TUNNEY. Were you aware of the fact that, by a consensus decision, that the City Council of San Diego refrained from soliciting either the Republican or the Democratic conventions. Were you aware of that at any time?

Mr. GENEEN. No; I was not aware of it. It is somewhat surprising to me in view of the fact that the State of California had shown such tremendous support for bringing it to San Diego.

Senator TUNNEY. Were you aware of the fact that the hotels and the businessmen and the restaurateurs in San Diego as a consensus were opposed to having the convention come to San Diego?

Mr. GENEEN. I don't know that it is a fact.

Senator TUNNEY. You never were aware of this?

Mr. GENEEN. No; I was not.

Senator TUNNEY. In other words, the conversations which you had with local officials—did you have any conversation with any local officials in San Diego?

Mr. GENEEN. The answer is "No."

Senator TUNNEY. Just with Mr. Wilson, Congressman Wilson?

Mr. GENEEN. That's right.

Senator TUNNEY. And with Lieutenant Governor Reinecke?

Mr. GENEEN. Never met him.

Senator TUNNEY. Never met him?

Apparently your answer would be that they did not ever indicate to you that the city of San Diego was very deeply distressed about the possibility or the local businessmen were deeply distressed about the possibility of having the convention come because they would lose their long-time reservations of people who had come back to the city on a regular basis year after year?

Mr. GENEEN. Mr. Senator, I am not aware at all of whether those are facts or that they had them. I can only say it was—the State of California was supporting it because they wanted it.

Senator TUNNEY. That is all.

Senator HART. Senator Mathias?

Senator MATHIAS. I have no questions.

Senator COOK. Mr. Geneen, do you remember on what occasion this subject of the Sheraton Corp's. obligation to the San Diego Convention and Business Bureau was discussed at your board of directors' meeting?

Mr. GENEEN. If I heard you correctly, Senator, you said the San Diego Convention Bureau?

Senator COOK. That's right.

Mr. GENEEN. No; I don't recall it was ever discussed at our board meetings because, again, it is not a political contribution. It is a normal, ordinary business expense of the Sheraton Hotel. I will add to that, that when we spent \$250,000 that you referred to earlier, in the promotion, opening promotion expense of the Waikiki Hotel in Hawaii, neither was that mentioned to our board because that is part of the normal business operating expense.

Senator COOK. If you didn't take it up at any of your board meetings, did you ever talk to Mr. Rohatyn, one of your directors, about this situation as it involved San Diego and the funds that Sheraton would expend with the convention bureau?

Mr. GENEEN. I don't recall it and I don't know of any particular reason that I would have to.

Senator COOK. What you are saying is, then, you don't recall and, to the best of your knowledge, you never did talk to him about it?

Mr. GENEEN. That is correct.

Senator COOK. Senator Tunney asked you relative to the documents and he said that this is another one of the clouds that is over this situation. Let's see if we can get the clouds off of it, Mr. Geneen.

Did you ever talk to Mr. Kleindienst, who is the real subject of these hearings, relative to a contribution to the convention bureau in San Diego and the Republican National Convention?

Mr. GENEEN. I have never met and spoken to Mr. Kleindienst and, of course, not on this subject.

Senator COOK. So, therefore, if the cloud is on the nomination of Mr. Kleindienst, you never discussed with Mr. Kleindienst in any way, shape, or form any kind of a contribution that Sheraton would make to San Diego, to the San Diego Convention Bureau, for the purpose of the Republican National Convention out there?

Mr. GENEEN. That is correct, Senator, and as I repeat, I have never met or spoken to him.

Senator Cook. And relative to the cloud that may be over these hearings involving Mr. Kleindienst in regard to the destruction of any records in the ITT office in Washington, you don't have a private office in that ITT suite for Mr. Kleindienst, do you?

Mr. GENEEN. I do not.

Senator Cook. Well, then, there would be no reason to think there would be a cloud on Mr. Kleindienst's nomination to be Attorney General of the United States relative to whatever disposition was taken of records of the ITT Corp. in your company offices in Washington, would there?

Mr. GENEEN. Well, Mr. Senator, I can only speak for our company records. I don't think there is anything involved in our company records but we will have a report on it; so my comment is: I don't know of anything that would have any bearing on the case and this will come out in our report.

Senator Cook. Mr. Geneen, when did you appear before the House committee to discuss conglomerates; was that in 1970 or 1971?

Mr. GENEEN. I think it was the latter part of 1970. This is the Celler committee and I think the hearings started, and this is just my memory now, around the latter part of 1970 and the early part of 1971 and it would be in that period that we appeared before it.

Senator Cook. Would you have appeared before that committee prior to August of 1970, somewhere around the summertime?

Mr. GENEEN. No. I think—

Senator Cook. Mr. Geneen, let me refresh your memory; it was November 20, 1969?

Mr. GENEEN. Yes, I was just trying to remember. I just got a correction. We have printed speeches and printed material so it is easy to identify; the end of 1969 and the beginning of 1970.

Senator Cook. And is the New York Times correct that on the occasion of your testimony at that time you said to that committee during those hearings that the day of massive acquisitions by conglomerates had come to an end?

Mr. GENEEN. I don't recall that particular statement. I said, I am sure I may have said this, under present conditions with the changes in tax laws and the accounting rules and particularly with the economy as it was at that point, I thought with the runaway, I thought that would be a good description phase of mergers that had been going on probably would not occur gain. Now, that is a more accurate statement.

Senator Cook. The New York Times reported you as having said at that time that the day of—and I am trying to quote it because I put it in the record. In essence the New York Times article said that you testified that the day of the major acquisitions by conglomerates had come to an end, but that you did not believe that this would in any way, for instance, stifle the ability of your corporation to continue to move ahead and continue to improve.

Mr. GENEEN. I think we were talking about our corporation. I said we did not plan any major acquisitions at that time and probably in the future.

Senator Cook. How long had ITT owned the Avis Corp.?

Mr. GENEEN. I think we bought it in about 1965; that is my best memory. It may be changeable, Senator.

Senator COOK. How long had you owned Levitt and its subsidiaries?

Mr. GENEEN. I am trying to recall dates now but I would guess about 1968. I will correct these if they are incorrect.

Senator COOK. That would apply to Hamilton Life of New York?

Mr. GENEEN. Somewhere in that area. I think Hamilton was a little earlier, probably around 1966 or 1967, but I can correct those dates, if they are not correct, but approximately.

Senator COOK. And how long had you owned Grinnell and its Fire Division?

Mr. GENEEN. As of what date, Senator?

Senator COOK. Sir?

Mr. GENEEN. As of what date, Senator?

Senator COOK. As of the date of your appearance before the committee in 1969?

Mr. GENEEN. I am trying to remember when we closed some of these cases. I am going to guess it was probably on the order of a year because you realize—

Senator COOK. For the record, Mr. Geneen, I will put into the record that you acquired Avis on July 22, 1965; that you acquired Hamilton on December 23, 1965; that you acquired Levitt on February 11, 1968; that you acquired—I am trying to find the other corporations—Canteen on April 23, 1969; and you acquired Grinnell on October 31, 1969. Are those dates correct, to the best of your knowledge?

Mr. GENEEN. I assume they are, sir.

Senator COOK. You acquired these corporations because they were viable and they were profitable corporations at the time; is that correct?

Mr. GENEEN. They were viable and profitable and we thought we could improve them and we gave, as I said yesterday in my statement, sound securities, equity securities, and paid a reasonable premium for them and, I think, made better companies of them.

Senator COOK. We have heard a great deal about these figures but they are merely figures that we have heard from either Mr. McLaren or from those who testified. As one of my friends said the other day when I talked about hearsay, he said, "It is not hearsay anymore; I read it in the paper." So what I would like to get from you, would you give us the value of the respective corporations and the sales of the respective corporations that you were required to give up by reason of the actions of the Justice Department through the consent agreement?

Mr. GENEEN. Yes; I have some rough figures and I can bring them up to date. The sales figures were roughly a little short of \$1 billion; and on the asset figures, if I take our life insurance companies as our investment, it would be about \$800 million; if I take our life insurance companies, as the assets involved, it would be somewhat higher and I will get it corrected.

Senator COOK. Did you say \$800 million?

Mr. GENEEN. \$800 million; a little short of a billion and approximately \$800 million without restating the assets of the insurance company.

Senator COOK. Had these corporations during the course of the time that you had them continued to pay dividends; had they continued to pay dividends?

Mr. GENEEN. The ones we are talking about?

Senator COOK. Yes.

Mr. GENEEN. Yes; they had, and I don't know the rate but, normally speaking, our dividends—well, let me say I think they did. Levitt had a large expansion program on and it may be that we reduced or cut out the dividend to help them with their expansion; and these are details that I would have to check, but I think the other ones did.

Senator COOK. In your conversations and meetings with officials of the Justice Department in the early stages, have you ever talked with Mr. McLaren relative to these matters?

Mr. GENEEN. I have never met Mr. McLaren.

Senator COOK. Have you met any lawyers out of the Antitrust Division that talked with any officials of your corporation relative to the suits that they were about to bring?

Mr. GENEEN. Well, our lawyers have, of course, met all of these people, I assume. I have had to appear for depositions on some of these areas, and I have met them on those occasions. I had one meeting before the judge in Bridgeport about some changes we had to make in *Grinnell*; and I met one of their people at that particular time, and, of course, in the trials we were exposed to each other to the extent that I was on the stand as president. Now, those are the normal contacts.

Senator COOK. Mr. Geneen, what I am trying to get at is, did your lawyers ever discuss with you the basic reasons for the action of the Government at the time that you acquired Hartford, for instance, in regard to your other holdings?

Mr. GENEEN. I don't understand the last part of the question. Certainly they discussed with me the attitude of the Justice Department and the position that they had taken.

Senator COOK. I hate to be guilty of such leading questions, so I guess I will refer back to the record.

The judge that signed the order in Connecticut said that he approved of it and said that it was in the public interest because the reason for the action in the first place, and that was the monopolistic appearance by reason of all of the insurance companies and adding in Hartford, had been eliminated by the fact you were asked to divest yourself of Hamilton Life of New York, and the fire insurance division of Grinnell. There was no longer any reason or basis now for the article 18 action under the Clatyon Act, and, therefore, he said it was in the public interest.

Dean Griswold said that the basis for the action was the establishment of a monopoly in the insurance field, and when your corporation agreed to divest itself of Grinnell, the fire division, and Hamilton Life of New York, that the basis for the action in the first place no longer existed; therefore, the acquisition of Hartford could under no circumstances be considered improper. Did your lawyers discuss it with you on that basis?

Mr. Geneen. We had a settlement argument basically where we went through this whole thing, and our conclusions were—I think I have covered some of this in the statement—that Grinnell was not even, other than the fire protection division, was not even a question on the Government's part of anticompetitive action.

Now, we had felt from the beginning, and we had ample counsel's opinion on the subject, that Hartford was not in an anticompetitive

situation. We had gone through the long injunction trial on exactly this basis and won it; and, as far as we were concerned, there were no anticompetitive elements involved.

Now, the court cases or the cases from the standpoint of the Justice Department, named in relation to Hartford, the possibility or potential, if that is the right word, you might say, of alinement of Avis, Levitt, and to some extent the insurance companies; these were the contentions they were making. I don't think we necessarily agreed with them, but certainly in removing fire protection, Grinnell, Avis, Levitt, and the insurance company we had removed even what the Government was contending, whether we agreed it was real or not.

Maybe that ties in with what you are saying, Senator.

Senator Cook. On the points in discussion, had ITT lost any of the preliminary steps to the Federal Government in regard to the three suits in question?

Mr. GENEEN. Had we?

Senator Cook. Yes.

Mr. GENEEN. No; we had not; and more importantly, we had won by July 2, the first one came down, I think, the general case, December 30.

Senator Cook. And you had won it?

Mr. GENEEN. We had won it and not only had we won it but I think it is well known the judge wrote a very strong opinion in which he pointed out there was no factual support, and the keyword is "facts" to the statement there was any anticompetitive action in the market.

I think the important point about the judge's comment, there were two important points, really, that was after a very long trial in which there were thousands of hours of affidavits, industry witnesses, cross-examination, everything going on before the judge, where all the facts of the case and the industry and its competitive actions were placed before him, and, as a result, at the time he came to that conclusion. Having come to that conclusion, he also included in his opinion a very interesting statement. He must have, apparently, I am assuming now, must have got the impression that the basic thrust of the Government's case was against bigness per se, which we spoke about yesterday, because in his opinion he also included the statement that if the Congress intended that mere aggregation of assets was to be an anti-trust situation or offense, that this should be done by Congress and not by some allegation based on anticompetitive actions which were not anticompetitive.

Senator Cook. So, therefore, when Dean Griswold said that when the *Grinnell* case came to the Supreme Court, that all of the major questions of fact had been lost for the Government: that is a correct statement?

Mr. GENEEN. In my opinion, and from what our lawyers told us, yes.

Senator Cook. Give me the status of the *Canteen* case at that time?

Mr. GENEEN. The *Canteen* case—I am trying to remember the dates. The *Grinnell* case, as I recall, went to trial somewhere around September, October 1970; and the opinion came out around December 30, 1970.

The *Canteen* case went to trial about December 1970, January 1971, and the opinion came down on July 2, and the *Canteen* opinion was also a finding that there was no basis in fact for the Government's

case and, again, a very strong case, a very strong opinion rather, on the basis that there was absolutely no anticompetitive action in the marketplace.

Senator COOK. Can I get back to this later, Mr. Chairman, if my time is up?

Senator HART. Surely.

Senator COOK. All right.

Senator HART. Permit me to steal a little time.

Yesterday—the transcript of yesterday's hearing is not yet available to us and my memory is not clear as to quite how far I had gotten along with you on the basic questions that I thought would be helpful—I had inquired as to the structure of the Washington office of ITT and the nature of the instructions given to personnel in that office with respect to contacts being made on the Hill and the executive branch and otherwise.

Did I ask you, and I rather think I did, what sort of written policy exists with respect to reporting on Government contacts made by ITT personnel on lobbying and any other activity of the Washington office that bears on Government relations?

Mr. GENEEN. I think you did, Senator, and I think my reply was that this was all in the area of Mr. Merrian, who ran the office, and I didn't know what his specific instructions were because I was not a normal recipient of such reports, if there were any.

Senator HART. Do you know what sort of a written record is kept and maintained as part of the ordinary course of business in the Washington office with respect to Governmental contacts?

Mr. GENEEN. I do not, Mr. Senator.

Senator HART. What sort of communication takes place after contact has been made?

Mr. GENEEN. In the Washington office, no, I do not.

Senator HART. Are contacts to you?

Mr. GENEEN. Beg pardon?

Senator HART. Are contacts or reports made to you by Washington?

Mr. GENEEN. It would be very, very rare that they would make any reports to me unless I had some specific requests and normally they would come to me through the public relations department.

Senator HART. One of the marks of excellence about ITT according to material in the House Antitrust Committee's report of June 1, 1971, one of its strengths, is its internal communication system. Now, reading at page 85 from that report:

Under Mr. Geneen, efficient, modern management requires a communication system that gathers and makes available factual information on a timely basis. What is unique about the ITT system is the amount of detail included in routine communications functions.

ITT's communications procedures are of two general types, (1) regularly scheduled meetings and (2) regularly scheduled written reports. In 1968 ITT spent more than \$3 million on executive travel alone.

In an article in *Saturday Review*, L. L. Golden describes seven levels of meetings that ITT utilizes.

Senator HART. There is a rather detailed explanation of that.

The ITT system of reports contains four categories, including a monthly managers' letter sent by the Chief Executive of each area headquarters, operating group, and company, to central headquarters.

Senator HART. And the subcommittee then says:

Mr. Geneen's methods of operation have been described as brilliant and ruthless.

That is their word; that is not mine.

Mr. GENEEN. Thank you. [Laughter.]

Senator HART (reading):

There is universal agreement that he demands an extraordinary amount of detail from subordinate officials; some problems, even quite minor, are solved at a higher level in ITT than at any other large company.

Forbes magazine describes Geneen's attention to detail as follows: "What is unusual about Geneen is the detail he demands. He demands monthly reports from all divisions. He studies them at monthly meetings attended by his key staff people and important line people. The monthly reports have to include not only major items on why a division is above or below quota but items as minor as a lost order. To insure that the reports are made in sufficient detail, Geneen has a staff that is constantly dropping in on operations to check on them, and line people know if Geneen finds out anything negative about a man's operation, no matter how petty from anyone else but the man himself, he explodes. So the reports are highly detailed."

And the subcommittee adds:

Mr. Geneen is without question a superior individual with many talents. His exceptional drive and ambition, however, have produced an overly enthusiastic program for ITT's growth.

That last sentence doesn't really bear on the reason I press you now for the kind of reports that came to you out of Washington.

Now, you are engaged in making contact with governments all over the world; there is nothing improper about it. Much of your business is with foreign governments. Your subsidiaries must, in the ordinary course of things, have all sorts of problems not just with the U.S. Government but also with a score of governments.

Now, don't you have a structured communications system to keep you abreast of all the significant problems bearing on governmental relations?

What I am trying to find out is, what reports were made to you? What did you know out of the Washington office with respect to what was not an insignificant concern? You visited me; you visited many others. The Washington staff must have been sending you something?

Mr. GENEEN. Do you want me to answer, Senator?

No. 1, I think some of those—they are glowing statements, really, but I think I can understand some of the exaggeration and I am surprised that the Government reported so thoroughly.

But to come back to the point I think you will find a threat all through that, Senator, of controls that have to do with operations and line areas which we do review in great detail each month here and abroad and that is the, you might say, the guts of our business.

Now, when it comes to the Washington office area and my interest, we may have something come up like the Burke-Hartke bill and this would be of particular interest, we would have and I would get a report on this probably from our public relations department that maybe based on something from the Washington office, but normally speaking I would not be aware of their day to day contacts or their day to day work.

We have all kinds of what you might call requirements for export licenses; we have overseas activities which are in competition with our European, for example, competitors, maybe wishing to sell products behind the Iron Curtain; that is, American subsidiaries, we have to get permission in Washington.

We have pollution problems, like everybody, of pollution and these require licenses and so on and on, an enormous amount of Washington activity would be in that particular area.

If I get to the point where I have a particular area, then I would get a report, perhaps from the public relations department, on anything significantly developed, but I don't think I would be getting any continuing stream of reports in these kinds of areas

Senator HART. I have here two reports; both of these are from Avis, and I would suggest they reflect an interest and an obligation to report to central headquarters on legislative, political matters, really, of lesser concern than perhaps the antitrust problems:

We had been quite active in churning up opposition to the legislation introduced in California which would place us under the California Public Utilities Commission for rates, advertising, et cetera. We have an understanding that the legislation will not be pushed by the sponsors.

Then there is a second:

It appears we have been successful in stopping the legislation introduced in Hawaii which would limit any type of discounts on cars sold in that state. It did pass the House but the Senate killed it.

Would you not get a report from Mr. Merrian or someone in the Washington office if a contact had been made with Secretary Stans, Secretary Connally, Mr. Flanigan? Wouldn't that, under the rigid discipline that has been described, applicable to the reporting obligation in your system, wouldn't that at least get as much attention as what happened to a bill in Hawaii?

Mr. GENEEN. Well, Mr. Senator, you are going from Avis reports there and they are line operations and that would be the basic report.

Now, I would get a report on some area that I might be interested in if I asked them to make a contact and give me some report back. But, normally, our line operations come up as the way you described them and I would not be getting routine reports on the contacts elsewhere unless it was something very important which came up.

Senator HART. Would the Washington office report to Mr. Gerrity on these actions?

Mr. GENEEN. It would be reported to Mr. Merrian and Mr. Merrian reports to Mr. Gerrity.

Senator HART. You said that the Avis thing is a line——

Mr. GENEEN. Yes, that is what I meant by line operations.

Senator HART. What is the equivalent between the Washington ITT office and your office to that from Avis to your office?

Mr. GENEEN. Well——

Senator HART. What I am trying to find out is what does the Washington office do on reports comparable to what you just said Avis does?

Mr. GENEEN. Well, I can make the distinction that Avis earns money and our Washington office does not. I am not saying that facetiously. It is a line operation in Avis which has, I think—the figure was like \$260 million in sales, and this is their monthly report, and I said, coming back to the material you were reading from, the control, basically, this is our control of operations. When you get to the Washington office or the public relations area, this is a staff function, and the staff functions as such would report into the headquarters of the company but they don't furnish a report of the type that we get from our operating people.

Senator HART. But what type do they furnish?

Mr. GENEEN. I was going to say they would give us reports on significant matters as they thought would be of importance to us as they came along, but not routine reports of things happening in the detail of the Washington office. Am I clear?

Senator HART. I am clear, am I not, that the Washington office doesn't work in isolation from the New York office?

Mr. GENEEN. No; no. It does not but it doesn't—excuse me.

Senator HART. Then we will call it line or staff or what have you. Would you furnish us such documents as have been sent from the Washington office to your New York office bearing on any areas of inquiry. What kind of report is made by the Washington staff to New York reflecting the contacts made under the caption "Lobbying"—which I do not use in the sense of something intrinsically evil—Government contacts, executive branch contacts, let us, rather than having this kind of—

Mr. GENEEN. No, no; I understand.

Senator HART. This kind of unsatisfactory visit—let's see them.

Mr. GENEEN. Bearing on what, Mr. Senator?

Senator HART. Well, specifically, bearing on any activities reported to you by the Washington office in connection with the antitrust interest of ITT.

Mr. GENEEN. OK, sir.

Senator HART. I think that is inclusive enough.

Mr. GENEEN. I was just going to say, with the help of counsel, we will have to check records and put this together. What period would you want this to cover, Senator?

Senator HART. Well, what brings us all together relates to a settlement that occurred in—

Mr. GENEEN. 1971?

Senator HART. 1971.

Mr. GENEEN. All right.

Senator HART. And activities looking toward the settlement, again, apparently, in 1969, maybe 1970?

Mr. GENEEN. I would say 1970. We will check the records.

Senator HART. That is really what we are trying to get at.

Mr. GENEEN. Yes; these will be documents that came up from Washington to us.

Senator HART. I have, I think, taken close to 23 minutes.

Senator Kennedy?

Senator KENNEDY. I will pass my time.

Senator HART. Senator Scott?

Senator Gurney?

Senator GURNEY. Mr. Geneen, there has been a lot of testimony here, of course, in these hearings about discussions with officials of ITT, with people in the Justice Department, by antitrust counsel, in your specific case, of course, of Attorney General Mitchell, of general antitrust matters, and you testified, as I recall, that it was because of your concern over what the administration was going to do about conglomerates. You wanted to know their policy and you wanted to make your input and that is why you had your discussion with the Attorney General.

You also testified that you had discussed this matter with several top administration officials and also Members of Congress.

Now, in this whole period of time, besides what the administration was intending or not intending to do about antitrust matters insofar as conglomerates are concerned, wasn't there a great deal of interest on Capitol Hill in various committees controlled by the Democrats about conglomerates?

Mr. GENEEN. Senator, I have already testified that we appeared before the Celler committee.

Senator GURNEY. Yes. I understand that.

Mr. GENEEN. And that would be the major area of review that I knew where we were concerned or interested, if that is better. There were other hearings where we were not. But at the same time our problem, the way I saw it, was that these were moving very slowly and as to the policy which was going to be effected, if you remember what I said in my opening statement, there was a very broad division between antitrust lawyers, economists, and plain people in the legislature, in Congress and otherwise, about two methods of doing this.

One was to carry this through the Congress where you had the reviews of the committees and things that we are speaking of here, in which Mr. Celler's review would have been one; and the other was to take some kind of a novel approach to antitrust law by taking a case which was not an anticompetitive problem, and passing this up to create by precedent, if you will, a law against bigness, as we saw it, without going through the safeguards or the process of Congress; and we felt that was extremely important as an economic problem of real concern to the country and our own way of looking at it; it involves us directly, but it goes back to the basic policy question we raised, our general policy—are you attacking bigness per se; are you saying just because we are big we are anticompetitive, or are you saying you are going to examine the marketplace, look at the facts as we talked about a month ago, and if there are no anticompetitive effects this is not an antitrust problem.

That was the issue we were dealing with.

I don't know; I am not an antitrust lawyer but I don't know how to describe it. If I can draw a parallel, my lawyers always say my parallels are no good, but, in effect, we were saying if you can take a case where there are no anticompetitive elements, and by some manner get this to become a precedent of law binding on everybody thereafter, it merely means you are making all mergers therefore illegal whether they are anticompetitive or not, and this is a particularly important legal question because if you think about it, I don't have to quote anything from my own, because I go back to the Council of Economic Advisers in 1968, as a matter of fact, the last, I think it was in the last administration, you will find some statements in there to the effect that they are not against mergers; they are only against mergers which result in a less efficient or to put it another way, they are mergers that result in a more efficient use of the Nation's manpower resources, capital and material, and so on.

And if you look at the same Council of Economic Advisers' report in 1970, you will find a similar statement: They are not against mergers because in many ways they clean out poor management, inefficient operations and it is part of the cleansing process of industry, so there is no basic tenet against mergers but here we were, with a precedent-type case going up on a principle which was against bigness, which said, in effect, "This will stop all mergers" and I started to say I

can't put this in easy language but the way I like to describe it at the time was, I said, in effect, if you wanted to define a jaywalker as a man who can step off the sidewalk, can step off but he hasn't, but the fact he potentially can, makes him a violator and you are putting him in jail; you not only have stopped jaywalking but also stopped everybody from using the sidewalk, and this was the basic tenet with which we were concerned.

Senator GURNEY. I do appreciate that.

Mr. GENEEN. I am sorry I took so long.

Senator GURNEY. I am sorry you feel you had to go over it again because I didn't intend to go into that. But the point I was trying to make is, you were put in a nutshell, you as the president of the company were obviously very concerned about what the Government, either the executive branch or the legislative branch, was going to do in the antitrust field about conglomerates; isn't that the way to put it?

Mr. GENEEN. If such a thing were done, Senator, it would not be limited to conglomerates if that is the term, because size—it doesn't make any difference.

Senator GURNEY. True, but as it affects your company?

Mr. GENEEN. All right, as it affects any company. In that particular case, it would affect all companies. I don't know what the division would have been because I am assuming the law or precedent which became law would apply equally against all companies. I don't know what basis size was and there was no division of size.

Senator GURNEY. Well, yours was; but I would like to point out during that same period, you testified that you appeared, or your company appeared, I guess you did, before the House Antitrust Subcommittee. In the first part of 1969 there were six committees in Congress looking at conglomerates.

The Senate Banking Committee, for example, was looking at the SEC regulation on law changes affecting conglomerates.

The House Ways and Means Committee had hearings on tax measures and their impact on conglomerates.

The Senate antitrust hearings on the conglomerate takeover of automobile insurance companies.

The Senate Finance Committee which, of course, is similar to the House Ways and Means Committee, also had hearings on conglomerates.

The House Banking Committee also had hearings on conglomerates and, finally, the House Antitrust Subcommittee, the one that you appeared before, also had hearings on conglomerates.

The point I am trying to make and finally we have arrived at is that there was very intense interest here in the Government—

Mr. GENEEN. That's right.

Senator GURNEY (continuing). Not only in the executive branch but also the legislative branch, the Congress, that was shedding their searchlight on conglomerates, what they were up to, and what Congress ought to do about it, and I would think that you, as the president of the company, would have been highly concerned about what was going on here in Washington about conglomerates. I am not surprised that you did want to talk to people about it.

Mr. GENEEN. Senator, you are right and I did.

Senator GURNEY. So I would also think that, as the president of your company, you might have been very derelict if you didn't touch

base with everybody you could, to find out what the Government was up to, and make your own input on what you thought ought to perhaps be done in that field; is that a fair assumption?

Mr. GENEEN. Yes; it is.

I saw an even more imminent danger in the fact that these things would move faster than Congress was going to consider them.

Senator GURNEY. The other point I was trying to bring out here is this interest in conglomerates was not only Republican but it was also Democratic insofar as Congress is concerned because the Congress is controlled by Democrats and when hearings are held in this Congress it is because the Democrats call them, and the thrust of the hearing, the objective of the hearing, is what the Democrats want, and they were just as concerned with conglomerates, what was going on in that field, as the Justice Department and the rest of the executive branch.

That is all, Mr. Chairman.

Senator HART. It would follow that you would want to know also what your people in Washington were doing about these matters?

Mr. GENEEN. I will be glad to do that, Senator. I will repeat it for my counsel, you want to know also—I am sorry, I thought you were asking me a question.

Senator KENNEDY. I just have one question before the break.

I understand Mr. Robert Lavoie is your vice president for security?

Mr. GENEEN. I am not sure of his title but he is generally responsible for security.

Senator KENNEDY. Did you directly or indirectly instruct Mr. Lavoie or anyone on his staff to go through the files, ITT Washington files, for the purpose of removing materials?

Mr. GENEEN. Let me say I didn't and I am not sure anybody did. I haven't got the facts and we will have the report early this afternoon, Senator.

Senator KENNEDY. Well, you did not?

Mr. GENEEN. That is correct.

Senator KENNEDY. Thank you very much.

Senator HART. We will recess until 2 p.m.

(Whereupon, at 12:35 p.m., the hearing was recessed to reconvene at 2 o'clock this date.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Let's have order. Proceed.

Senator HART. Mr. Geneen, when, if during the course of the afternoon, the preliminary report on the document-shredding activity comes in, we will be glad to get it. I take it it isn't here?

TESTIMONY OF HAROLD S. GENEEN, PRESIDENT, INTERNATIONAL TELEPHONE & TELEGRAPH CORP.; ACCOMPANIED BY PHIL E. GILBERT, JR., ATTORNEY—Resumed

Mr. GILBERT. Yes, sir; we do have a preliminary report.

Mr. GENEEN. Do you want Mr. Aibel to report on this on what I take was the request of yesterday?

Senator HART. All right.

The CHAIRMAN. Is that Mr. Aibel's testimony?

Mr. GENEEN. Beg pardon?

The CHAIRMAN. I am seeing if I understand, did you say shredding?

Senator HART. Yes.

The CHAIRMAN. Is that Mr. Aibel's testimony?

Mr. GENEEN. He was going to report on it, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. GENEEN. I think I said this morning there would be a preliminary report ready this afternoon, and Mr. Aibel has that report and can report on it if you wish.

Senator HART. Well, depending on the way the Chair would prefer to receive that we will proceed, but first let me establish, if we can, what general policy the company may have with respect to the retention of documents.

I know that is a rather sweeping question, but I want it to be inclusive. What is the general practice in the company with respect to the retention of documents?

Mr. GENEEN. Mr. Senator, that is covered in the report with copies of the instructions themselves, and, if I may suggest, I think it would be the best way to cover it.

Senator HART. I take it, then, Mr. Chairman, that we would receive the report in the form of testimony from Mr. Aibel.

The CHAIRMAN. I will have it reproduced now for the committee and the press. I think this witness, Mr. Aibel, is short of copies.

Senator HART. Would it be desirable to wait until the reproduction has been finished? I can proceed with some more general questions if you would like.

The CHAIRMAN. Where is the report?

Mr. AIBEL. Senator, it is in my hands.

The CHAIRMAN. Are you Mr. Aibel?

Mr. AIBEL. Yes, sir.

The CHAIRMAN. Stand up.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AIBEL. I do.

The CHAIRMAN. As I understand it, you have only one copy. You don't have copies for the committee?

¶ ¶

TESTIMONY OF HOWARD J. AIBEL, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, INTERNATIONAL TELEPHONE & TELEGRAPH CORP.

Mr. AIBEL. Actually we have three.

The CHAIRMAN. Three?

Mr. AIBEL. Yes, sir.

The CHAIRMAN. Now, proceed, sir.

Mr. AIBEL. At the outset, Mr. Chairman, I want to apologize for presenting a report which is undated in typescript. My original here has been dated.

The CHAIRMAN. Identify yourself for the record.

Mr. AIBEL. My name is Howard J. Aibel. I am a senior vice president, general counsel, of ITT. I have in my hands a memorandum which I prepared for Mr. Geneen, which is on the subject of report on document destruction; and with the chairman's permission, I

would read that into the record. This memorandum summarizes information supplied to me by a team of counsel who investigated the report which appeared in the Anderson column published March 1, 1972, that documents in the ITT Washington office had been destroyed in an effort to avoid their production to governmental agencies. The information was gathered by an on-the-spot inspection of the premises including the files involved, and interviews with all available members of the staff of the Washington office involved, some 25 people, with the exception of Mrs. Beard.

The CHAIRMAN. Speak a little louder.

Mr. AIBEL. On Wednesday, February 23, 1972, Mr. Brit Hume, Mr. Anderson's associate, appeared at the Washington office with the original ribbon copy of a document which appeared to be an ITT memorandum which had come into his possession through theft or other misappropriation. On the afternoon of that day after being informed of the possibility that documents were unauthorizedly being taken from the Washington office and delivered to Mr. Anderson or Mr. Hume, Mr. Merriam telephoned ITT headquarters in New York and requested that a security officer be sent to check the security arrangements at the Washington office. The security officer, Mr. Russell Tagliareni, arrived on Thursday afternoon, February 24. Contrary to Mr. Anderson's report, the security officer was not requested to destroy any documents and he did not do so.

At his regular weekly staff meeting on Thursday morning, February 24, Mr. Merriam discussed with the staff the fact that there was a possibility that documents were being illegally removed from the office files for the purpose of being turned over to Mr. Anderson. Mr. Merriam did not discuss the substance or subject matter of the Hume memorandum at the staff meeting. Mr. Merriam stated that because of the possibility that thefts had occurred, all members of the office staff should review their files to determine what, if any, documents were missing; at the same time they were told to remove any documents that were no longer needed for current operations as well as documents which, if put into Mr. Anderson's possession, could be misused and misconstrued by him so as to cause unwarranted embarrassment to the people mentioned therein. In this connection, Mr. Merriam also referred to ITT's long standing document retention program, and to a memorandum that he had circulated to the staff about a month earlier concerning the company's record retention policy. Copies of these documents are attached.

Following this meeting, the members of the staff and their secretaries reviewed their files and disposed of various unneeded documents, most of them old and outdated materials, some of which went back to 1962. Mrs. Beard personally so reviewed her files. She participated in the determination as to which files were to be retained. In the course of this review of files, no copies were found of the memorandum which Mr. Hume had displayed during his visit.

Many of the documents disposed of were put through the office shredding machine. This was consistent with ITT's long-established procedures relating to the disposition of documents containing proprietary information. The procedure is set forth in ITT policy guide E.R. 24 and standard practice E.R. 24/1. These guidelines for safeguarding ITT proprietary information specifically provide:

Destruction: When System Confidential, Personal and Confidential, and Legal Confidential information has served its purpose and retention is no longer required, it shall be destroyed by incineration, pulping or shredding.

At the time of this file review and disposition of documents, none of the ITT personnel involved knew whether or not Mr. Hume or Mr. Anderson would actually publish the memorandum that had been displayed during Mr. Hume's visit to the ITT office. They were not aware of any outstanding or contemplated congressional committee request nor of any other governmental agency request for production of documents from the files of the Washington office. The motivation of the ITT personnel involved in this file review appeared to be that of ascertaining whether files were missing and to forestall the theft of any additional documents from the ITT files.

No one interviewed in the Washington office knows of any ITT documents which were destroyed which directly or indirectly linked the settlement of the ITT antitrust cases with ITT's commitment to support the effort of the San Diego Convention Bureau to have San Diego selected as the site of the Republican National Convention.

The investigation indicates that no documents were destroyed which were required to be preserved under the Internal Revenue Code and Regulations or any other laws or regulations.

The investigation is continuing.

It is signed Howard J. Aibel, dated March 16, 1972. The attachments which I referred to are the following: a memorandum dated January 25, 1972, directed to the Washington staff from W. R. Merriam, on the subject of records retention and disposition program. As well as a copy of ITT policy guide E.R. 2.4, "Safeguarding ITT Proprietary Information," and E.R. 2.4/1, "Procedures for Safeguarding ITT Proprietary Information."

The CHAIRMAN. They will be admitted into the record.

(The documents referred to follow:)

ITT,

Washington, D.C., January 25, 1972.

To: The Washington Staff

From: W. R. Merriam

Subject: Records Retention and Disposition Program

INTENT

This policy outlines the responsibility and requirements for the implementation of a Records Retention and Disposition Program for the ITT Washington office as a means of controlling records from the time of their creation or receipt until their ultimate disposition.

POLICY

It is the Corporate policy to retain records only for such periods of time as may be required by law and regulation or as business needs dictate. Therefore, a formal program will be established to insure that the retention and disposition of ITT Washington office records are effected in a systematic, timely and economical manner.

DEFINITIONS

Corporate Records: For the purpose of this policy, Corporate records are defined as all records and documents prepared internally or received from external sources in the course of day-to-day business, including correspondence, memoranda, reports, vouchers, purchase and sales records, plans, financial records, and all other similar materials.

Records Retention and Disposition Schedules: These are schedules which list, by title, each of the types or kinds of records maintained by sections (i.e., Congressional, Import and Export, Press, DOD, etc.) specifying the period for which

each such category of record is to be retained so as to comply with legal or regulatory requirements, management policy and business needs. The schedules also indicate the ultimate disposition which is to be made with respect to each category of record.

RECORDS RETENTION AND DISPOSITION CLASSIFICATIONS

A records retention and disposition classification will be assigned each record based on retention requirements or its value to ITT. Such classifications are as follows:

Read and Dispose Records: Records used for immediate information only; to be discarded after review. Proper use of this classification is *vital* since each record correctly withheld from an active file eliminates time required at a later date for its screening and removal.

Short Reference Records: Records required for immediate usage or reference, but estimated to be of no value after 90 days. A record whose value can only be determined by future events will be placed in this category until discarded or transferred to a scheduled time schedule.

Scheduled Time Records: Records which must be retained for a specific period of time in accordance with the established records retention and disposition schedule.

RESPONSIBILITIES

Each Section Head is responsible for:

- (1) Insuring that ITT records in file areas under his jurisdiction are properly classified, filed and retained or removed for destruction.
- (2) Conducting a scheduled review (at least annually) of each file area to insure that the program is being carried out.

PROCEDURE

Classification of Records: Each employee in a managerial capacity responsible for initiating or having received a record in the course of conducting ITT business will assign a records retention and disposition classification (Read and Destroy, Short Reference or Scheduled Time) as defined above to each record prior to its being placed in a file.

Classified Material (DOD): All DOD classified material will be processed through the ITT Washington Security Control Office.

Maintenance of Files: To permit easy review and removal of records, each file area will maintain their files on a calendar year basis; that is, at the beginning of each calendar year, a new folder will be initiated for each subject file. In addition, Short Reference Records will be maintained in separate folders from Scheduled Time Records.

ITT Proprietary Records: When not in use, these records shall not be left unattended in offices or other work areas but shall be stored in a locked file cabinet.

REVIEW AND DISPOSITION OF RECORDS

Short Reference Records: Quarterly, the individual responsible for the respective file area will review all Short Reference Record files discarding worthless records and retaining required records until the next review period. A record originally placed in this category, but whose retention period is now determined to be longer than 90 days will be transferred to the Scheduled Time Record Files.

Scheduled Time Records: Annually, the individual responsible for the respective file area will review all Scheduled Time Records to:

- (1) Discard material for which the records retention and disposition schedule date has been met or exceeded.
- (2) Store material which has become semiaactive or inactive but is within the records retention and disposition schedule.

Records containing *ITT Proprietary Information* shall be destroyed by incinerator, pulping or shredding in accordance with specific procedures prescribed by the Security Officer.

**ITT POLICY GUIDE, ER 2.4: SAFEGUARDING ITT PROPRIETARY
INFORMATION, DATED 9/22/69, EFFECTIVE 12/16/69**

INTENT

The intent of this Policy is to establish and define categories of Proprietary Information, assign responsibilities for safeguarding, and outline procedures to ensure security of such information.

SCOPE

Proprietary Information disclosed or released *without authorization is detrimental* to ITT. Three categories of Proprietary Information have been established: **SYSTEM CONFIDENTIAL**, **PERSONAL AND CONFIDENTIAL**, and **LEGAL CONFIDENTIAL**.

This Policy is not applicable to Government classified information.

DEFINITIONS

System Confidential: Business information of an *impersonal nature*, the unauthorized disclosure of which is *detrimental* to ITT interests.

Extra-Sensitive Information: The unauthorized disclosure of which would result in *grave damage* to the Corporation.

Personal and Confidential: All information of a personal nature and certain selected business information which must be controlled on a strict "need-to-know" basis.¹

Legal Confidential: Any communication from an ITT System employee requesting legal opinion, analysis or advice from ITT or outside legal counsel or furnishing information for such purpose and any response thereto by legal counsel.

To be Opened by Addressee Only: An additional marking applied to envelope or container of Personal and Confidential information indicating it is to be opened by addressee "only."

To be Opened by Addressee or Designee Only: An additional marking applied to envelopes or containers of System Confidential information, indicating it is to be opened by addressee, or by persons designated to act in his absence.

Authorized Persons: Individuals authorized to receive System Confidential, Personal and Confidential, or Legal Confidential information.

Need-to-Know: Persons to whom Proprietary Information must be disclosed in the performance of their duties have a "need-to-know." This principle is paramount where "extra-sensitive" information is involved.

Examples of *System Confidential* information are:

- Bid proposals and contract negotiations and renegotiations
- Budgets, procurement costs
- Competitive relationships with other firms
- Corporate planning
- Expansion programs
- Financial, marketing, statistical data
- Improvements in manufacturing processes, techniques, or methods or new processes, techniques or methods
- Business plans
- Periodic business reports and summaries
- New orders (until officially released)
- Negotiations or new business (until officially released)
- Internal policies of sole concern to ITT, including preliminary plans regarding management and legal reorganizations
- Labor negotiation strategy
- Lay-offs (contemplated or in planning)
- Mergers, dissolutions or significant reorganizations
- New products or product lines, and significant changes in established lines
- Plant relocation—contemplated or in planning
- Sources of special supplies
- Staff studies

- Development progress reports¹
 - Local technical documents, such as summary technical reports¹
 - Research and development programs¹
 - Proprietary intellectual property such as technical information, inventions, patent applications, data programs and all documentation relating thereto¹
 - Documentation and status reports relating to agreements and business relationships, both interhouse and with a third party¹
- Examples of *Personal and Confidential* information are:
- Controversy within or between Headquarters staffs, Group and/or ITT unit personnel
 - Information of an embarrassing nature
 - Personnel action such as promotions, demotions, resignations, bonus, compensation and benefits data, discharge, performance appraisals, transfer until officially released
 - Psychological assessment reports
 - Acquisitions (planned or actual)¹
- Note:* Information in this category shall also be designated "extra-sensitive" and the special marking requirements set forth in ER 2.4/1 applies.
- Examples of *Legal Confidential* information are:
- Communications to the Legal Department at ITT World or Group Headquarters or an ITT System unit primarily for the purpose of obtaining legal advice
 - Information and data furnished at the request of the Legal Department to enable legal service or advice to be given
 - Legal advice and opinion communicated by the attorney to the corporate client
 - Documents that repeat the substance of legal advice received from the ITT Legal Department

ITT POLICY GUIDE, ER 2.4/1: PROCEDURE FOR SAFEGUARDING ITT PROPRIETARY INFORMATION, DATED 9/22/69, EFFECTIVE 12/1/69

INTENT

This Standard Practice specifies the procedures and controls to secure ITT Proprietary Information (see Policy ER 2.4, "Safeguarding ITT Proprietary Information").

RESPONSIBILITY

Management at all levels is responsible for insuring that employees understand and implement the provisions of this Standard Practice.

Each ITT employee is personally responsible for compliance with Policy ER 2.4 and the procedures specified herein.

PROCEDURES

General: As regards ITT Proprietary Information, it is the responsibility of management at all levels to:

Indoctrinate all employees with these procedures

Review local practices to insure that proprietary information is properly identified and marked

Ensure that recipients have a "need-to-know." Application of this principle is paramount whenever "extra-sensitive" information is involved.

Limit reproduction and distribution to those copies absolutely necessary

Destroy by burning, pulping, or by an equally secure method proprietary information in excess of requirements. Spoiled pages, overruns, carbon paper, and one-time carbon-typewriter ribbons are included in destruction procedure.

Provide secure storage during nonworking hours and when otherwise not in use

Assure adequate packaging prior to transmittal

Assure that only secure means of transmittal are utilized

Marking: Employees who originate or reproduce proprietary information are responsible that such material is marked or *stamped* System Confidential, Personal and Confidential or Legal Confidential, as appropriate.

¹ Denotes revision or addition.

SYSTEM CONFIDENTIAL PERSONAL AND CONFIDENTIAL LEGAL CONFIDENTIAL

The marking shall appear at the top and bottom of the first page of the document, as well as in a visible position when the document is folded or rolled.

In addition, when, in the judgment of the originator, Proprietary Information is "extra-sensitive" in nature, additional controls and accountability are necessary. Therefore, the following special marking requirements apply:²

Consecutively number all pages to reflect the total number. For example, each page of a four page document will be numbered PAGE 1 of 4, PAGE 2 of 4, etc.

All copies shall be numbered in series. For example, if four copies of a document are generated, the first page of each will be marked, "COPY #1 OF 4 COPIES," "COPY #2 OF 4 COPIES," etc.

Each copy will also contain a distribution list. The distribution list will normally appear on the last page, but may be shown on the first page.

Reproduction: Departments that reproduce proprietary information shall insure that access is held to a minimum and granted only to those employees with a need-to-know. When, because of the nature or volume, controlled access by normal means is impracticable during reproduction, area controls will be instituted until the work is completed and the proprietary information removed. When System Confidential, Personal and Confidential or Legal Confidential documents are reproduced for the originator by a System location's graphic arts shop or duplicating room, the material shall be hand-carried to the supervisor of the reproduction area who shall assign an authorized employee(s) to complete the reproduction as rapidly as possible and return the work with all excess or spoiled copies to the supervisor for disposition. Typewriting is considered to be reproduction.

Notes, overruns, spoiled pages, plates, stencils, carbon paper, negatives, one-time typewriter ribbon and all waste involved in the reproduction of proprietary information shall be safeguarded until disposed of as outlined herein.

When the services of an outside vendor or supplier are required (in lieu of in house reproduction), the originator will coordinate the requirement with the ITT unit's procurement function who will, in turn, coordinate accomplishment of the services required with the Security Office. Procedures will be established by the procurement function, with the guidance of the Security Office, to insure that all spoiled copies, overruns, proofs, and other residual matter is returned to the ITT unit contracting for the reproduction service, where its destruction will be effected as described in this Standard Practice.

Storage: Proprietary information, when not in use, shall be stored in a cabinet or other container equipped with secure locking device. The combination or key (if a key operated locking device is used) shall be safeguarded so as to afford the same degree of protection as for proprietary information. The combination or key shall not be secreted in any unlocked piece of office furniture or accessory as a convenience for daily access.

Transmission:

General Requirements: Each person having custody of proprietary information must determine, prior to oral disclosure or release of written information, that the intended recipient has a "need-to-know." Conversely, each recipient must ensure that the information is protected against unauthorized disclosure. Such information shall not be:

Discussed in any public place or in the presence of unauthorized persons

Transmitted by electrical transmission in clear text (CRYPTEL System shall be used)

Special Requirements: "Extra-sensitive" System Confidential information shall be limited to those individuals appearing on the distribution list. If wider distribution appears to be warranted, *concurrence of the originator* of the "extra-sensitive" data shall be obtained. The individual who proposes the additional distribution shall annotate his copy of the document to indicate by name the added distribution.

External Transmission: Proprietary information to be transmitted outside of a System building or location by public mail or by courier shall be enclosed in two opaque wrappers or envelopes. The inner wrapper only will be plainly marked with a stamp, indicating as appropriate, that the contents are "System Confidential, To Be Opened By Addressee or Designee Only," "Personal and Confidential, To Be Opened By Addressee Only," or "Legal Confidential, To Be

² Denotes revision or addition.

Opened By Addressee or Designee Only." There are available preprinted envelopes, imprinted with the above designations, which may be used as the inner wrapper when preparing proprietary information for external transmission. In addition, the envelopes have distinctive colored borders, blue for Personal and Confidential, green for System Confidential and red for Legal Confidential. Both wrappers or envelopes will be addressed and should bear the sender's name and address. The outer wrapper or envelope shall *not* be stamped or marked to indicate that the contents are System Confidential, Personal and Confidential or Legal Confidential. Both the inner and outer wrapper or envelope shall be securely sealed.

Internal Transmission: Proprietary information to be transmitted within a System building or location shall be enclosed in a single opaque wrapper or envelope which is plainly marked with a stamp indicating, as appropriate, that the contents are "System Confidential, To Be Opened By Addressee or Designee Only", "Personal and Confidential, To Be Opened by Addressee Only," or "Legal Confidential, To Be Opened By Addressee or Designee Only." Preprinted, reusable envelopes with the green, blue, and red color designations described above may be used for this purpose. To preclude surreptitious access to the material in the envelopes, they will be sealed by placing a gummed label over the flap of the envelope. There are available preprinted gummed labels to be used for this purpose. These labels preprinted with the designations, "System Confidential—To Be Opened By Addressee or Designee Only," "Personal and Confidential—To Be Opened By Addressee Only" and "Legal Confidential—To Be Opened By Addressee or Designee Only" are a stock item available from stationery and supplies.

Electrical Transmission: Proprietary information sent by electrical means (when speed is essential) shall be prepared and transmitted as a CRYPTEL (coded) message. Two coding devices are available for electrical transmission. One, a manually operated device (CRYPTEL 501); the other, an electronic encrypting device, available at major ITT Communications Centers (CRYPTEL 240). The clear text message prepared for coded transmission by the sending facility as well as the decoded message received by addressee(s) shall be identified as proprietary information (stamped as System Confidential, Personal and Confidential or Legal Confidential) and safeguarded in accordance with the procedures herein set forth and those contained in Standard Practice ER 2.4/2, "Security of Teletype and Cable Transmissions."

Although the use of the CRYPTEL System indicates to recipients that the enclosed information is proprietary in nature, the phrase, System Confidential, Personal and Confidential or Legal Confidential shall be included in the message, to indicate to the recipient(s) which classification category applies. When using the Manual Device, the classification shall appear in the message in clear text immediately preceding the "Code Indicator" for each specific message. When the Electronic Device is used, the entire message, with the exception of the message number and priority designation, shall be encrypted.

Destruction: When System Confidential, Personal and Confidential, and Legal Confidential information has served its purpose and retention is no longer required, it shall be destroyed by incineration, pulping or shredding in accordance with specific procedures prescribed by the Security Officer. It shall not be treated as ordinary waste and shall *not* be disposed of by placing in waste baskets. Such material shall be accumulated on a daily basis and maintained in approved storage containers until the volume warrants final disposition.

Unauthorized Disclosures: Willful, witting disclosure, or disclosure through gross negligence, of any ITT Proprietary Information to unauthorized persons by an ITT employee will be considered sufficient cause for disciplinary action.

Senator HART. Well, do you have in the security division employees whose principal responsibility is to participate with nonsecurity branch employees in file review?

Mr. AIBEL. To the best of my knowledge, Senator, the use of security personnel in any such task or assignment would be very unusual. The primary function of the security personnel is mainly to insure the security of our defense establishment, defense work premises, as well as headquarters locations where information, either proprietary to the U.S. Government or confidential to the company in a similar manner are protected. They are also charged with security of the premises and that has been an increasing problem what with bomb threats and similar incidents of violence.

Senator HART. I do not have it before me, but I remember either in the Anderson column or in testimony before us, the suggestion that security people reviewed files and also swept the premises or swept the telephone system. Does this ring a bell with you?

Mr. AIBEL. I don't have any recollection of, remember a reference to, sweeping the premises or the telephone system in the Anderson column.

However, our security personnel do from time to time employ experts for the purpose of checking the communications system to see whether it has been tampered with.

Senator HART. Whether or not that kind of inspection is made in connection with the file review you have described you do not know?

Mr. AIBEL. I don't know whether any such review was made in connection with that file review, but I am aware that within the last few days such an inspection of the ITT communications system in Washington was made, and I would rather doubt that it had been made earlier in light of that more recent effort.

Senator HART. Now, Mr. Aibel, did you participate in the investigation you have described or are you reporting to us or through Mr. Geneen to us what someone else told you?

Mr. AIBEL. Essentially I am reporting to you what others have reported to me. I authorized the review. I saw the lawyers in operation, I participated on the periphery of several of the interviews but I personally did not carry out any of the investigating or review procedures that were described by me earlier.

Senator HART. But I understand that some of your lawyers were associated in this file inspection review, not just the security people and office employees?

Mr. AIBEL. Senator, I misspoke. What you said is correct, correctly states on the record. The lawyers I referred to were brought in to look into the charge in Mr. Anderson's column, and did not participate in any way in the review which was made by the ITT office personnel following Mr. Hume's visit to the office on February 23.

Senator HART. Are you familiar with a Mr. Lavoie?

Mr. AIBEL. Yes, I know him.

Senator HART. And who is Mr. Lavoie?

Mr. AIBEL. I don't know his precise title but he is the chief of ITT internal security.

Senator HART. Do you have any information as to what role he played, if any, in the file review and associated shredding?

Mr. AIBEL. My knowledge is limited to being aware that he was contacted, his office was contacted and that Mr. Tagliareni, whose name I mentioned as being the security officer who reviewed the security of the premises, was assigned to come to the Washington office.

As I mentioned in reading my report, the security officer who did visit and inspect the premises was not asked to destroy any files, and did, in fact, not destroy any files.

Senator HART. Who made the decision to destroy?

Mr. AIBEL. Each of the men in the office who reviewed his files decided what was material that was old and outdated or would be in the category I mentioned as a second category, that which, if it were to be in the possession of Mr. Anderson, and used by him in a way which was misconstrued, could cause unwarranted embarrassment to the persons named in the memo.

Senator HART. How are you in a position to tell us that documents linking the ITT settlement to the Republican convention did not go through the shredding?

Mr. AIBEL. The personnel who went through the files were asked by one or more of the four lawyers who conducted this investigation whether they had any such materials in their files or whether those materials had been extracted from their files, if in fact they had that material, and whether the material which, if it existed, had been removed from the files, had been destroyed, and the answer in each instance was in the negative.

Senator HART. How many people are involved, how many lawyers participated in making this review and judgment?

Mr. AIBEL. Four.

Senator HART. Would you give us their names?

Mr. AIBEL. Yes. None of these lawyers are employed as staff counsel by ITT. In deciding to carry out this review I thought it would be more appropriate to have outside nonemployed counsel to do the task. Their names are John S. Martin, Jr., Michael W. Mitchell, Stewart L. Shapiro, and Herbert Teitlebaum.

Senator HART. Are they in practice in Washington, do you know?

Mr. AIBEL. No. Well, Mr. Martin used to practice in Washington when he was a member of the Solicitor General's office, and I would guess that he is admitted to practice here. However his office is in New York City. And all the rest are employed, the remaining three, are with the firm of Skadden, Arps, Slate, Meagher & Flom.

Senator HART. Is it fair then to say that in order to find out—and if by implication this would suggest I question your testimony, I don't—but for us to determine we would have to interview each of the employees who made search through his own files, and the four in order to get direct testimony on this?

Mr. AIBEL. Well, if you were to try to establish this matter in a court of law you would have to probably examine each of the people who reviewed his own files. I don't know what the testimony of the four lawyers would add to that primary evidence.

Senator HART. As I understood it, the lawyers were engaged to make sure that none of the material bore a relationship between the Republican convention and the antitrust settlement?

Mr. AIBEL. Senator Hart, I probably wasn't clear. The lawyers were brought to the office for the purpose of reviewing the charge, finding out what the facts were, as to the basis for the file review, and the destruction of the documents, and in the course of that they sought to determine what the nature of the documentation was that had been involved, and particularly were concerned because by that time this hearing had been scheduled or were trying to determine whether there had been any linking of the antitrust settlement with the San Diego convention which had ever been in existence or had been destroyed.

Senator HART. So there may have been documents that mentioned both subjects, there may have been documents that mentioned just the convention matter, and there may have been documents that mentioned the settlement of the suit, is that a fair inquiry?

Mr. AIBEL. Yes, it is a fair inquiry.

My best information is that there were no documents which connected the San Diego convention with the antitrust settlement.

There were some documents relating to the San Diego convention but the way that it has been described to me they were documents which related to the nature of the facilities that were available in the city, and tourist brochures and similar documents. I have been told there were documents relating to the antitrust settlement but they were of general nature which were sent out to various places of an informational kind, as I now understand it, and, in general, it is my conclusion when reviewing the nature of the documents that they were documents that had been copied in other locations either because they were sent out of the Washington office or had been received from other locations at the Washington office.

Senator HART. Are you in a position to tell us how many documents were destroyed?

Mr. AIBEL. No, I cannot tell you the number. I was told that the volume was substantial.

Senator HART. Substantial?

Mr. AIBEL. Yes. I don't know what the physical volume was, but I would tell you that my impression now is that there were many sacks of papers that were destroyed.

Senator HART. Well, except for documents that discussed aspects of the settlement or the convention, what other documents would have been destroyed?

Mr. AIBEL. There were a great number of old files. You inquired earlier concerning the records retention program.

The CHAIRMAN. Speak a little louder, please, so we can hear.

Mr. AIBEL. Excuse me. You spoke the last few minutes ago about which was a policy. I had intended to attach that as an exhibit to the report—basically—but I failed to, it apparently was not referred to in the course of my test and so was not included when the typescript was completed—but basically that is a policy that has been in existence for about 10 years, and was primarily adopted for the purpose of conserving space and weeding out old files. There is always a continuing pressure for more file space, and particularly where you have very expensive office space, sometimes the safeguarding or keeping of files that could be as much as 10 years old can be quite a costly matter, particularly when there is no need to retain the documents.

So, the procedure calls for the establishment of a retention period, depending upon the classification of the document, and at the end of the retention period, unless the document is in a working file, it is supposed to be disposed of by either the file custodian or by the secretary who might maintain the file.

Now, this policy had never been implemented in the Washington office, and I was told that there were many files that hadn't been reviewed since they had been established in 1961 or 1962. So there was a great deal of material relating to past activities of the Washington office, there were a great many clippings, a great many newspaper clippings, a great many copies of speeches that had been collected, there were brochures relating to past Congresses, materials that would be reference material in any particular year or two, they had been stored. Man's squirrel-like instinct is to keep everything. So many, many files were full of that kind of material.

Senator HART. Mr. Chairman, I have exceeded my time and I apologize. I must go to New York on another assignment, but how voluminous are the files in the Washington office now?

Mr. AIBEL. I am sorry, Senator, I don't know. I can't respond to that.

Senator HART. There is one thing I wanted to ask Mr. Geneen.

I think my impression is you did tell us yesterday in your prepared statement that you had advised the Attorney General or the Department of Justice of your intention to express your concern and disagreement with their antitrust policy to other members of the executive branch. Did you not, sir?

Mr. GENEEN. Yes, I did say that, sir.

Senator HART. I think that is a practice that ought to apply in every case where there is pending litigation and trying to obtain from others in the executive branch a chance to review it.

Mr. GENEEN. I did do that.

Senator HART. Thank you, Mr. Chairman.

Senator TUNNEY. Mr. Geneen, what is your impression of the report on file shredding that we have just heard, considering all the circumstances of this case?

Mr. GENEEN. Well, I read the report just before I came in, and my impression, I think, the very key thing that was said in that report is that when Mr. Merriam had his meeting, regular meeting, by the way, staff meeting, on February 24, that he did not mention the contents of the Anderson memo or column, whichever it may fit, I don't know and, therefore, there could have been no—this is my reaction—no tieup in people's minds to anything specific.

What he did talk about was the fact that our files apparently seemed to be an open sieve so far as security was concerned, and he asked them to go back and review, I think I can say fairly, and correct me if I am stating the report wrongly, what was in the files from the standpoint of things you might say might be embarrassing, and while he was at it rather belatedly he caught up with the fact that the record retention of the file was behind. I think that is less significant and I think it is interesting that the nature of the material is of the type described.

I think that is a perfectly normal reaction, and I think the other key point of it is that at that time they were under no understanding of any restriction on handling of records because there was no committee in session, and they knew of no restriction on handling their own records against what seems to be an attack from the outside of an entirely different nature. I think that is a perfectly reasonable reaction to take, and I think the fact, if I can comment, in my opinion, that this team of lawyers interviewed these people individually and each of them have answered in a way to substantiate a fact that they did not have any specific knowledge of the type that might have concerned the committee, had they known the committee had been interested in it, in my mind carries out the bona fideness of what they were trying to do.

Senator TUNNEY. Well, as far as every bit of information that I have, I believe you to be a man of consummate integrity.

On the other hand, I would say with regard to the file shredding that took place, don't you feel that by shredding substantial numbers of documents that it creates an inference, particularly inasmuch as the document shredding took place the day after it was known to the Washington office that Mr. Anderson had the Beard memorandum, that sensitive documents relating to the Beard memorandum were destroyed as well as other outdated documents? Isn't that—don't you think that that is an inference that is created on the face of it?

Mr. GENEEN. Senator, I am not sure because I think I picked out what I thought was the key sentence in there, that when they were asked to review, and speaking of the individual members of the staff, their files, we did not disclose the nature or the existence of this memorandum. So presumably they made their review without that in mind.

Excuse me a second, if I may. I will read from the memorandum on that, Senator. He says, "Mr. Merriam did not discuss the substance or the subject matter of the Hume memorandum."

I presume what they might have taken out of the files were things that might have just been embarrassing.

Let me say I think you brought up yesterday that, as I remember, I was called Big Mouth Hal or something, I am not sure what the internal staff sense of humor might be in some of the writing and internal memorandum of anybody and this could be embarrassing to me.

Senator TUNNEY. Do you know why, maybe Mr. Aibel would be much better able to answer this question, why any documents dealing with the San Diego Convention were destroyed in the two categories to which I understood you to refer—I don't have your statement; I don't know if there is a copy of the statement here—but you listed two categories of documents that were destroyed, those which were aged and those which might prove embarrassing if Mr. Anderson got hold of them. I would assume that the documents dealing with the San Diego Convention were not aged inasmuch as the San Diego Convention was just a recent subject, so, therefore, I am led to believe that those documents would be destroyed because they were embarrassing.

Mr. AIBEL. I think there is another category, that is the use of, and as I described the documents which I was told were, the only documents relating to the convention that were destroyed, they were tourist-type brochures and documents relating to hotel space, and things of that ilk which were generally available everywhere for the asking, and since part of this program was to reduce the use of file space to preserve what was necessary, it was thrown out.

Senator TUNNEY. Your investigation, in your investigation, did you determine how many people of the 50 or 55 employees that are there in the office, I think in the Washington office, as I understood from Mr. Geneen's statement yesterday—or was it 25?

Mr. GENEEN. I said 25 subject to correction, Senator. I believe the correct figure is 19, many of which are on routine affairs like import licenses, and so forth.

Senator TUNNEY. All right.

How many people of the 19 were aware that Mr. Hume had visited Mrs. Beard at the ITT office the day before at the time of the document shredding?

Mr. AIBEL. To the best of my information, two.

Senator TUNNEY. Just the two. Mrs. Beard—

Mr. AIBEL. I am sorry, I misspoke, I forgot about Mrs. Beard. I should have said three.

Senator TUNNEY. They were the only ones who knew the next day about the Hume visit and the Beard memorandum having been given to Anderson?

Mr. AIBEL. That is the information I have, yes.

Senator TUNNEY. Was that information—were all 19 people questioned on that point, do you know?

Mr. AIBEL. No. The information was developed by asking the people, with the exception of Mrs. Beard, who were at the Hume interview whether they had spoken to others about it.

Senator TUNNEY. And they said they had not spoken to anyone else?

Mr. AIBEL. In the Washington office, that is right.

Senator TUNNEY. In the Washington office. But Mrs. Beard was not questioned?

Mr. AIBEL. She wasn't there.

Senator TUNNEY. So presumably Mrs. Beard could have spoken to other members of the Washington office?

Mr. AIBEL. She could have.

Senator TUNNEY. Two people in the Washington office that did know were Mr. Merriam and who?

Mr. AIBEL. Mr. Ryan.

Senator TUNNEY. Mr. Ryan.

Now, applying the tests that you mentioned, the two tests, aged documents, embarrassing documents, how would the Beard memo—

Mr. AIBEL. Senator, I am sorry I didn't hear your question.

Senator TUNNEY. Do you want to finish the communication?

Mr. AIBEL. Please.

Mr. Martin has asked me—

Senator TUNNEY. Is he in the legal staff?

Mr. AIBEL. Yes; he is one of the men who carried out the investigation. He has asked me to correct a statement that I made.

Senator COOK. Do you want him up here?

Senator TUNNEY. Fine. Mr. Martin can sit with him, if it is all right with the chairman. I would like to have Mr. Martin.

Senator BURDICK (presiding). Have a chair.

Hold up your right hand.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARTIN. I do.

Mr. AIBEL. Mr. Martin has told me just a minute ago that the fact that Mr. Hume had been in the office and the fact that he had displayed a memorandum to Messrs. Merriam, Ryan, and Mrs. Beard, was generally known throughout the office, but the substance of the memorandum was not known.

TESTIMONY OF JOHN S. MARTIN, JR., ATTORNEY AT LAW

Mr. MARTIN. John S. Martin, Jr.

Senator TUNNEY. Could you just give your title?

Mr. MARTIN. I am an attorney in private practice, and I am a sole practitioner.

Senator TUNNEY. And you were hired by ITT to do the investigating?

Mr. MARTIN. I was retained after this investigation was announced to consult with some of the people involved, and during the course of that I had occasion to raise this issue concerning the document destruction and to discuss it with the people in the Washington office. I helped in the preparation of the report Mr. Aibel has referred

to, based upon my interviews with some of the people in the Washington office. I did not interview all of them. As Mr. Aibel has indicated, other people participated in this investigation.

Senator TUNNEY. Were you able to discern from your questioning of the representatives of the Washington office whether or not all members of the Washington office knew about the Anderson column or the preparation of the Anderson column, the Hume visit to Mrs. Beard?

Mr. MARTIN. I do not think that I specifically asked that question. I know that people were aware that he was in. I know that when he presented this document—he had it originally.

Senator TUNNEY. Right. Were there any copies?

Mr. MARTIN. There were no copies in the Washington office. He asked them if they would like a copy, and they obviously said that they would. [Laughter.] So that memorandum Mr. Hume had was then xeroxed in the Washington office, and I think people were aware he was in, aware that he had some documents.

Senator TUNNEY. Did Mr. Hume allow that document to be xeroxed that day that he visited the ITT office?

Mr. MARTIN. Yes. But I do not think—and at the staff meeting the following day, Mr. Merriam did not discuss with the staff what the substance of that document was. He simply mentioned that he had come in with a document that purported to come from their files, and did not go into the substance of it.

Senator TUNNEY. Did your investigation discern whether or not Mrs. Beard had talked to him in the Washington office about the memo?

Mr. MARTIN. Well, she had been present when Mr. Hume was there, was my understanding.

Senator TUNNEY. Do you know whether she talked to any members of the Washington office about the memo? We have had testimony from Mr. Hume that Mrs. Beard was thunderstruck when she learned that the memo, which she admitted was her memo, was in the hands of Mr. Hume.

Now my question to you is whether or not you were able or not to discern during your investigation that Mrs. Beard had talked to any member of the Washington office between the time she first learned Mr. Hume had the document and the time of the shredding of the document the next day?

Senator Cook. Would the Senator yield for just one thing? You said "which she admitted was her memorandum."

Senator TUNNEY. I said Mr. Hume testified to that. We do not have any independent verification of the accuracy of that statement.

Senator Cook. All right.

Senator TUNNEY. All right.

Mr. MARTIN. Well, I am not so sure I know now what the question is.

Senator TUNNEY. The question is whether Mrs. Beard—in your investigation did you determine whether or not Mrs. Beard had talked to any other member of the office after she first learned that Mr. Hume had the memo and the time of the shredding of documents in the office the following day?

Mr. MARTIN. I really cannot give you that time sequence. She obviously was present with two people from the press relations staff of the Washington office talking with Mr. Hume so they—

Senator TUNNEY. Who were those two people?

Mr. MARTIN. Mr. Goodrich and Mr. Horner.

Senator TUNNEY. So Mr. Goodrich and Mr. Horner knew about it?

Mr. MARTIN. That is right.

Senator TUNNEY. And Mr. Ryan knew about it and Mr. Merriam knew about it?

Mr. MARTIN. Mr. Ryan and Mr. Merriam.

Senator TUNNEY. So four people in the Washington office knew about it.

Mr. MARTIN. Senator, there is also a fifth, if my understanding is correct, if Mr. Hume's column or Mr. Anderson's column is correct, I believe Mrs. Beard's secretary was present at her home during the time that Mr. Hume called on her and interviewed her there.

Senator TUNNEY. So there would be five people who knew that?

Mr. MARTIN. Yes, sir; yes, Senator.

Senator TUNNEY. Do you have any knowledge, I am talking about knowledge now, do you have any probative knowledge that would demonstrate that all other members of the office, besides the five, were ignorant of the fact that Mrs. Beard had written a memorandum which was in Mr. Hume's hands?

Mr. MARTIN. Obviously, we would have no way of knowing that. We were not there.

Senator TUNNEY. Did you question——

Mr. MARTIN. We did not question, so far as I know, I did not question them specifically about that.

Senator BURDICK. Your time has expired, Senator.

Ten minutes on this side.

Senator COOK. Thank you.

Senator FONG. You and how many other attorneys handled the investigation of the shredding?

Mr. MARTIN. There were three other attorneys who conducted interviews along these lines, Senator.

Senator FONG. Four, then there were four of you?

Mr. MARTIN. Four of us altogether.

Senator FONG. Four of you working on the problem of shredding, is that right?

Mr. MARTIN. Yes, among other things.

Senator FONG. How much time was spent on the report and how much on the investigation?

Mr. MARTIN. Well, I cannot speak for the others. This is a matter with which I was concerned in an overall way during the course of the time I have been down here. How much exact time I spent on this subject would be just very hard to give you.

Senator FONG. Each one of you took separate courses?

Mr. MARTIN. What we did, and I think we have to go back to perhaps the time I was retained, I am an outside counsel, I am a private practitioner, I had no prior connection, had never represented ITT prior to this date. I was retained, and my understanding of my being retained, was that there had been this allegation of shredding of documents, there was a feeling that the people in the Washington office who had been involved in this should have outside counsel, independent of ITT to represent them because this was a serious allegation and they should be separately advised of their rights, and that is why I was brought in to provide separate and distinct legal advice

as to their rights and as to whether or not there had been any violation of law I assume.

So that was the reason, in part, that I was here to provide these people with independent counsel. So this was a matter that I was trying to satisfy myself about to determine that they had not acted improperly. To the extent that it is relevant, I believe that to be the case. They had not violated any law and did not act improperly. So this was a matter that I was concerned with from the outset and that is what I was in part trying to do in what I was down speaking with the various people.

Senator FONG. May I ask you whether you were investigating what were the contents of these documents that had been shredded?

Mr. MARTIN. Well, what we were trying to determine is what happened, what documents were involved, and whether or not there was any basis to feel there was anything improper done.

Senator FONG. Yes.

Now, in your investigation, what did you find out about the contents of these documents?

Mr. MARTIN. Well, I think what Mr. Aibel has stated became a memo, that you are dealing with files that in many instances people had never cleaned out. There has been talk here about a volume of material. These included press releases, you know, press clippings, and all kinds of back data. I found out, I satisfied myself, there was no intent from what I could determine, on the part of anybody to frustrate some investigation by this committee, for example.

Senator FONG. Did you find anything in these shredded documents or were you advised that any of their contents contained anything that showed that there was a connection between the offer of \$200,000 to the San Diego Convention and Tourist Bureau and the settlement of the ITT case?

Mr. MARTIN. Absolutely not.

Senator FONG. Did you find anything at all that connected anybody in ITT with any importuning of the Justice Department to secure a favorable consideration in this case?

Mr. MARTIN. No, sir.

Senator FONG. Did you find anything at all connecting settlement of the ITT case with the offer of \$200,000 to the San Diego Convention and Tourist Bureau?

Mr. MARTIN. No, sir.

Senator FONG. Was there anything, as far as you knew, that tied the shredded documents with anything that has transpired insofar as this case before this committee is concerned?

Mr. MARTIN. That poses to me a problem because so much has transpired—if you will go back again.

Senator FONG. We are investigating—the possibility of Mr. Kleindienst's involvement with the ITT Sheraton commitment.

Mr. MARTIN. There was nothing that I say or the statement says that I became aware of anything that tied with the ITT Sheraton's commitment to the San Diego Convention Bureau and the settlement of the antitrust suit.

Senator FONG. So, there was nothing there that was detrimental to the ITT Company or to the Justice Department or to anything of the people who, it has been alleged participated in the offer and acceptance—

Mr. MARTIN. That is correct.

Senator FONG (continuing). Of the money for the San Diego Convention?

Mr. MARTIN. That is correct. There was nothing that would relate to any, that would be evidence of any, improper link.

Senator FONG. May I ask you whether this was the same conclusion that was reached by the other three investigators?

Mr. MARTIN. Yes.

Senator FONG. In essence, the four of you have come to the conclusion that there was nothing in the contents of these documents that were shredded to cast any light upon what we are now discussing here?

Mr. MARTIN. Absolutely.

Senator FONG. Thank you very much.

Senator BURDICK. I have no questions at this time.

I yield the balance of my time to Senator Tunney.

Senator TUNNEY. Senator Kennedy just came in and may have questions.

Senator KENNEDY. I would just like to question Mr. Aibel, if I could.

You have on page 3, "No one interviewed in the Washington office knows"—maybe you will just read that paragraph, the third last paragraph on page 3.

Mr. AIBEL. Senator, did you want me to read it out loud?

Senator KENNEDY. Yes, please.

Mr. AIBEL (reading)

No one interviewed in the Washington office knows of any ITT documents which were destroyed which directly or indirectly linked the settlement of the ITT antitrust cases with ITT's commitment to support the effort of the San Diego Convention Bureau to have San Diego selected as the site of the Republican National Convention.

Senator KENNEDY. Is that not really a judgmental decision or view that you are expressing there?

Mr. AIBEL. No.

Senator KENNEDY. It is not, it is not a judgmental decision? Are you not just expressing a judgment whether these documents link or do not link in terms of the settlement? Let us go in a different way. Could you tell us what documents were destroyed?

Senator Cook. Let him answer the question because I think he ought to.

Senator KENNEDY. I will ask my questions without the help of the Senator from Kentucky.

Senator Cook. Mr. Chairman, is the witness going to be allowed to answer a question?

Senator KENNEDY. Can I ask a question that I want to ask the witness, please?

Senator Cook. Are you withdrawing your question?

Senator KENNEDY. I will ask the question I want to ask and if the witness needs any clarification I will find out.

Can you tell us which documents were destroyed, can you give us a list of those documents?

Mr. AIBEL. No.

Senator KENNEDY. Do you know which documents were destroyed?

Mr. AIBEL. Only in a general way.

Senator KENNEDY. Well, can you describe them to us?

Mr. AIBEL. Yes, to the extent that I have before. Many of them were old speeches, old press releases, clippings, documents relating to past sessions of Congress. Some of them included dead prints of bills, committee reports. There were—there was old correspondence relating to issues that were current in 1963, 1964, and 1965, as I understand it, matters of that kind. I did ascertain, I did testify earlier that documents relating to the physical facilities in San Diego which would be of interest to one planning a convention of publicly available tourist brochures were, I am told, destroyed. And that is the only information I have as to documentation relating to San Diego that was destroyed.

Senator KENNEDY. The tourist brochures of San Diego—were they the only documents that related to San Diego?

Mr. AIBEL. Well, there was information relating to the number of hotel rooms, and similar facilities for visitors.

Senator KENNEDY. Were those documents put out by a panel or a tourist bureau or were they inside memoranda talking about the——

Mr. AIBEL. No, they were not.

Senator KENNEDY (continuing). Talking about the hotel?

Mr. AIBEL. They were not locally prepared materials. They came from the San Diego area from hotels or convention bureau or from the city itself.

Senator KENNEDY. Could you tell us what date those were printed, do you know?

Mr. AIBEL. No.

Senator KENNEDY. Were those printed tourist brochures——

Mr. AIBEL. That is what——

Senator KENNEDY (continuing). Or were they letters relating to the San Diego hotel space?

Mr. AIBEL. I am told they were not letters, they were printed brochures, and printed materials which may have been in the form of letters but they were the kind of thing that you could get if you sent away to the convention bureau for information about facilities in the city.

Senator KENNEDY. Were there any files in there that were Mrs. Beard's personal files?

Mr. AIBEL. John?

Mr. MARTIN. I think, Senator, from what I know to—there may have been some correspondence of hers. My understanding is that she was present when this was done. I do not know how you sometime differentiate private from company files. I know that—well, let us leave it at that.

Mr. AIBEL. Well, my information, Senator, is that she participated in the decision as to which documents to dispose of, and I take it, if there were personal files in that group that was disposed of she chose to do so, if my information is correct.

Senator KENNEDY. Your testimony is that she participated in or she sanctioned the destruction, the shredding of these files?

Mr. AIBEL. That is what my information is; yes, sir.

Senator KENNEDY. And there was no objection made by Mrs. Beard?

Mr. AIBEL. I am told she sort of got into the swing of things and said, "Why do we need this?" and "Why do we need that?" [Laughter.]

Senator KENNEDY. Who told you that? Who told you, who gave you this report? I mean, is this the report from people who were there at the time?

Mr. AIBEL. I got this from, I am not sure which, at this present moment, which of the four lawyers who conducted the interviews told me this.

Senator KENNEDY. Can Mr. Martin—is it Mr. Martin?

Mr. MARTIN. Yes, sir.

Senator KENNEDY. Can you tell us who was there at the time? Has that already been put into the record?

Mr. MARTIN. Well, I think she was—that Mr. Ryan, who reviewed this thing, was with her.

Senator KENNEDY. Excuse me, Mr. who?

Mr. MARTIN. Ryan.

Senator KENNEDY. Mr. Ryan.

Mr. Ryan? [Laughter.]

Mr. MARTIN. That is an Irish name, Senator.

Senator KENNEDY. I know. I know it is Irish. [Laughter.]

Which Mr. Ryan?

Mr. MARTIN. John Ryan. There is only one Mr. Ryan, to my knowledge, in the Washington office.

Senator KENNEDY. He gets around. [Laughter.]

Who else was there?

Mr. MARTIN. With Mrs. Beard on that occasion?

Senator KENNEDY. Yes.

Mr. MARTIN. I think Mr. Ryan.

Senator KENNEDY. Only Mr. Ryan?

Mr. MARTIN. I do not know whether or not Mrs. Beard's secretary was present. I do know, Senator, there was no security officer there as had been reported in the press.

Senator KENNEDY. I apologize for not being here earlier; have you gone over who actually did the shredding—was it Mr. Ryan?

Mr. MARTIN. I do not believe he did.

Senator KENNEDY. Can you tell us who did?

Mr. MARTIN. I believe it was a man who has kind of general chores in the Washington office, serves as a chauffeur.

Senator KENNEDY. General chores in the Washington office?

Mr. MARTIN. Chores.

Senator KENNEDY. Chores?

Mr. MARTIN. He is a chauffeur in the Washington office, runs messages.

Senator KENNEDY. Shreds material?

Mr. MARTIN. Yes: there has been in the Washington office for some time a shredding machine, Senator. It is kept there in connection with long established company policy, and has not been used for a long time.

Senator KENNEDY. So we had——

Mr. MARTIN. He was not brought in for the occasion.

Senator KENNEDY. If there was any shredding he does it? Would you say that is a fair observation, besides the other chores?

Mr. MARTIN. I assume that falls within his duties. He xeroxes.

Senator KENNEDY. Just those three, Mrs. Beard, Mr. Ryan and the shredder, whoever he is. [Laughter.]

Mr. MARTIN. He was not in the room when the files were reviewed. To the extent that they decided to shred them they gave them to him, I assume, and said, "Dispose of them."

Senator KENNEDY. But do I gather that Mr. Ryan and Mrs. Beard were making decisions as to which items were to be shredded or which were not, am I right?

Mr. MARTIN. I assume so.

Senator KENNEDY. Do you know who interviewed Mr. Ryan for the company?

Mr. MARTIN. Interviewed Mr. Ryan.

Senator KENNEDY. You interviewed Mr. Ryan? Well, then, when you say you assume, you know so, then?

Mr. MARTIN. I was not there.

Senator KENNEDY. Would you describe it to us then, tell us exactly what happened then?

Mr. MARTIN. Well, I cannot tell you exactly what happened then.

Senator KENNEDY. What Mr. Ryan told you.

Mr. MARTIN. I talked to Mr. Ryan about this. He said that he——

Senator KENNEDY. What did you say to Mr. Ryan, let us get it, we have some time; what did you say to him and what did he say to you?

Mr. MARTIN. Well, I will try to give you the substance of our conversation.

Senator KENNEDY. That is fine.

Mr. MARTIN. In effect, I asked him who had reviewed it—had anybody been present with Mrs. Beard, I asked him about this report that the security officers had gone through her files. He said, "No, there had been no security officer involved." That he had sat down with Mrs. Beard, that they had gone through her files to see whether there were things that were unnecessary; that in the course of it she, as I think he described it, participated, said, "Yes, let us get rid of this. There is no need for this," and that was the substance of our conversation.

Senator KENNEDY. Did he say who asked him to talk to Mrs. Beard about shredding the documents?

Mr. MARTIN. Well, he was present, Mr. Merriam had asked everybody in the office to go through their files for this purpose. I do not know, he did not tell me of anybody else speaking to him about this.

Senator KENNEDY. Mr. Merriam had requested that those files be destroyed?

Mr. MARTIN. Well, Mr. Merriam had a general discussion with the staff at their regular staff meeting, telling them that there was some indication that Mr. Anderson had, may have had, a document that may have come out of an ITT file and he was concerned that basically confidential documents of ITT were being stolen from their files, and he thought people should review their files to see if what was in there that should not be stolen.

Senator KENNEDY. Did he refer to the June 25 memorandum as being one of the documents that was stolen?

Mr. MARTIN. Senator, Mr. Merriam has never seen that memorandum prior to the time that it was produced in their office by Mr. Hume. That is—and to my knowledge, nobody else in the Washington office had seen that memorandum. So that is why I think I said that there was evidence that it may have been, that one they did not know. The security officer was brought down simply to determine whether, in fact, there was a leak and, if so, how it happened.

Senator BURDICK. Senator Cook.

Senator Cook. First of all, Mr. Geneen, please do not fire the shredder because he has now become the key witness in this case.

[Laughter.]

One of the most interesting remarks that has been made so far is, you said that you could not find a copy of the memorandum.

Mr. AIBEL. Yes, that is correct.

Senator Cook. Did Mrs. Beard look into the files while Mr. Hume was there or shortly after Mr. Hume left to see if there was a copy of this memorandum?

Mr. AIBEL. I do not know for sure but I do know she did——

Senator Cook. I should not really ask you that because she can answer that herself. Did she indicate to you that she looked?

Mr. AIBEL. I have not spoken to Mrs. Beard.

Senator Cook. Did anyone in the office indicate to you that they immediately looked to see?

Mr. AIBEL. Yes, Senator, this was a part of this purpose that was looking through the files to try to find copies of this memorandum.

Senator Cook. And you could not find a copy of this memorandum?

Mr. AIBEL. No copy was found.

Senator Cook. It is usually standard company policy to dictate memorandums and not make a copy of them?

Mr. AIBEL. It is not standard policy to follow that course.

Senator Cook. And you could not find, on that occasion, a copy of this memo?

Mr. AIBEL. We could not. We were a little puzzled in addition, by reason of the fact that the memorandum which Mr. Hume displayed did not have the usual file markings which indicate, which would indicate, that it had actually been in the file. It did not have the usual set of holes which would have been made with it in order to put it in the file, and there were no other markings on it which would have indicated its receipt for inclusion in the file.

Senator Cook. Do you time your mail and date your mail when it is received even on an interoffice basis?

Mr. AIBEL. No.

Senator Cook. You do not. Only on incoming mail?

Mr. AIBEL. That is correct.

Senator Cook. Let me ask you, Mr. Aibel, if you are familiar with the files of ITT, can you explain why in this week's Newsweek magazine there is a copy, purported copy, of the memorandum which says, "Personal and Confidential," which has next to Mrs. Beard's name a "D" and the one that appeared on Sunday, March 12, in the New York Times where it says, "A photocopy of the memorandum purportedly written by ITT lobbyist, Dita Beard," there is no "D" next to her name?

Mr. AIBEL. I have no explanation for it. I would point out that the memorandum which we—which was exhibited by Mr. Hume, I call it the Hume memorandum myself, was on two pages, and the memorandum reproduced in the New York Times appears to be on one page. And I have no explanation for the variance.

Senator Cook. If there was no copy in the file, and the copy in Newsweek purports to be a copy of it, and the exhibit in the New York Times purports to be a photocopy of it without the initial on it, and you did not have any copies in your files in the ITT office in Washington, how many copies of this memorandum were floating around?

Mr. AIBEL. Senator, all I know, can tell you, is that we were permitted to make one copy on our Xerox in Mr. Hume's presence. He apparently was fearful that he would not have the document returned if he allowed it to be xeroxed out of his presence and subsequently we made a few copies for purposes of our preparation for this proceeding here.

Senator Cook. Do you have any copies with you now?

Mr. AIBEL. I personally do not.

Senator Cook. The only one you have is from the New York Times?

Mr. AIBEL. Yes, sir.

Senator Cook. Well, I guess that takes care of that.

Is there any office requirement that memos like this, that copies be made and that they be in the files?

Mr. MARTIN. Sir—

Senator Cook. You are not an ITT employee.

Mr. MARTIN. I am sorry.

Mr. AIBEL. I do not know of any policy. I do know that the practice of all secretaries is to maintain a chronological file of memoranda or letters which they prepare and there are usually subject matter file copies also prepared for retention by the originator of the document, and that has been standard practice in ITT as far as my almost 8 years' experience in the company has demonstrated to me.

Senator Cook. Who is Mrs. Beard's secretary?

Mr. AIBEL. I only know her first name, which is Beverly. Do you know her last name?

Mr. MARTIN. No, I do not.

Senator Cook. Would you supply that for the record for us?

Mr. AIBEL. Certainly.

Senator Cook. Mr. Geneen, this morning you and I had not finished. We had gone through the *Canteen* case and the *Grinnell* case. Would you explain to me whether the Government in the *Hartford* case had won any of the steps so far in the legal processes of the *Federal Government v. ITT and Hartford*?

Mr. GENEEN. No, they had not, Senator.

Senator Cook. And that at the time negotiations were going on the Federal Government had not won any of the points of contention argued by them in either the *Grinnell* case, the *Canteen* case, or the *Hartford* case; is that correct?

Mr. GENEEN. That is correct, sir.

Senator Cook. Well, if that is the case, Mr. Geneen, why would a corporation give up a billion dollars in sales, \$950 million in assets, and keep one billion dollar company when it had not lost any of the cases so far? That in regard, too, the *Hartford* case it had received the approval of the insurance commissioner of the State of Connecticut and that the Federal Government had just been denied an injunction against your acquiring Hartford, what made such a good deal out of giving all this away so that you would make an offer, as has been quoted, on many occasions incorrectly, to the Republican Party of up to \$400,000 to pay for their convention expenses?

Mr. GENEEN. Well, I think I said in my statement, Senator, that this was not a legal decision that I made. It was a business decision and, as you recall, I think I pointed out that, we had gone through 2½ years of litigation, we were faced with a great deal more litigation.

While we thought that the cases were good and I accepted our lawyers' assessments that we could win them in the Supreme Court, there was always the contingent risk that we might not, and while that risk might be small, I think from the standpoint of our company that it made sense to us to settle at the point we did, and I want to make a couple of more comments to that point. This was a tough decision for us.

I do not think it was a good settlement in the sense that you just used it, that it was something we would be willing to——

Senator COOK. May we have order, Mr. Chairman?

Senator BURDICK. Let us have order.

Mr. GENEEN (continuing). Were willing to say was a victory on our part by any means.

I think if you just look at the newspapers we have been chastised for making a very unfavorable settlement from our standpoint, and our stock reflected it. We are in here explaining why it was such a good settlement or at least, answering to that question. I guess the answer is somewhere in between, it was probably a fair settlement.

Senator COOK. Is it not true, as a matter of fact, that it was such a good settlement that after the orders were entered on Saturday your stock closed on Monday down some 12 points?

Mr. GENEEN. It is true, I think it was 10 points, Senator.

Senator COOK. Ten points. It sure was a great reflection in the market that it was a good settlement, was it not, Mr. Geneen?

Mr. GENEEN. It certainly had a reflection but not a good one.

Senator COOK. Do you think you could convince your board of directors you would give \$200,000 to a political party if you had just had a billion dollars worth of assets and a billion dollars worth of sales taken away from you as a matter of a consent decree on an anti-trust suit?

Mr. GENEEN. I had trouble with my board of directors as it was.

Senator COOK. You mean you had trouble with your board of directors agreeing, having them agree, to the consent agreement?

Mr. GENEEN. Three of them thought it was an extremely tough settlement.

Senator COOK. Was one of the reasons, Mr. Geneen, that you made the remark in the fall of 1969 or 1970 during those hearings that you felt that the day of major acquisitions in conglomerates was over because of the fact that, not only of the policy of the Antitrust Division of the Justice Department, because, as Senator Gurney also pointed out this morning, that during that same time in 1969 there were then six committees or subcommittees of the House and the Senate of the United States that were looking into conglomerates and looking toward some type of ultimate legislative means by which this could be curbed?

Mr. GENEEN. Senator, in part that would be true, and I was also concerned in my mind, as I mentioned this morning, with the changes in the tax law, the changes in the accounting rules and, of course, we had heavily on our mind that while the Congress was viewing and reviewing the policy of the Antitrust Division it seemed to be to consummate by a maneuver, in a sense of a lawsuit rather than basic exchange in legislation, although it had the same effect as to what Congress was contemplating, arriving at the answer before Congress had a chance to get at it.

Senator COOK. Mr. Geneen, one last question. Did you give \$200,000 to the San Diego Convention and Visitors Bureau because the Justice Department had done you a favor by relieving you of a billion dollars worth of assets?

Mr. GENEEN. The answer is no, and I think I may state it very unequivocally there was absolutely no connection between Sheraton's action, which is a business transaction and stands on its own feet, and anything to do with any other of our activities, including our settlement with the Justice Department.

Senator COOK. Did you give the San Diego Visitors Convention and Visitors Bureau \$200,000 for the purpose of getting the Republican National Convention to San Diego because they just divested you of six profitmaking corporations that they made you give up and also made you say in those consent decrees that you would not acquire any corporations of assets over a \$100 million for a period of 10 years, that you would not acquire any insurance companies with assets over \$10 million and that you would not even acquire any smaller corporations with assets up to \$25 million if they constituted a monopoly within the area in which you were acquiring them if you own other corporations? Is that why you gave \$200,000 to San Diego for this convention?

Mr. GENEEN. The convention, to the convention bureau, the answer is no, we did not give it to them for that reason.

Senator COOK. Thank you, Mr. Chairman.

Senator MATHIAS. Mr. Chairman, would you yield?

Senator BURDICK. I have one question.

Senator MATHIAS. It is right on this point.

Mr. Geneen, there is testimony before this committee by Mr. Hume, who quoted a Mr. Parma of San Diego, that the \$100,000 deposited in the San Diego Convention Bureau originating from Sheraton Corp. was, in fact, earmarked money which it was understood would not be expended by the convention bureau in its own discretion but would, in fact, be reserved by the bureau to be expended at the direction of the Republican Party. Was that your understanding of that money?

Mr. GENEEN. Let me say as far as my understanding is concerned, and I think it is correct, we gave it to the San Diego Convention and Tourist Bureau without any strings other than a contribution as part of a community effort. Now, whatever action—except as stated in our telegram we were going to get the presidential headquarters and if there was to be another \$100,000 it was on certain conditions.

Now, any action that they had taken in how they were going to dispose, handle or what they were going to do with it, and had no condition go from us or any direction from us and I do not know whether that report is true. Certainly, we have no part of it so far as I know.

Senator MATHIAS. So far as the Sheraton Corp.?

Mr. GENEEN. Sheraton, yes.

Senator MATHIAS. As far as ITT is concerned?

Mr. GENEEN. That is correct.

Senator MATHIAS. There was no earmarking of any kind?

Mr. GENEEN. No, sir; this was given primarily and completely as a part of the community effort to the Bureau because of our business

interest and that is the only basis on which it was given and it was in accordance with our telegram.

Senator MATHIAS. Thank you.

Mr. GENEEN. Let me put it differently: Our telegram constitutes our complete understanding.

Senator MATHIAS. There is no side deal of any sort?

Mr. GENEEN. There is no side deal, no other deal, no other commitment of any kind.

Senator MATHIAS. Thank you.

Senator BURDICK. Mr. Aibel, you responded to some questions by Senator Cook about whether or not there were any copies of this memo, and explored that field generally. I have looked at a copy of this alleged memo and I find the last sentence as follows: "Please destroy this, huh." Are you apt to make a copy of that?

Mr. AIBEL. Regardless of what the instructions are on memos as to destruction, I always found the secretary put them in the chronological file.

Senator BURDICK. Do you really think there would be a copy of this one?

Mr. AIBEL. I think, well, there was one and that was —there is one, I guess, the original which Mr. Hume displayed. Whether or not there were any others prepared or whether or not they were destroyed, I can only speculate on it. But there has been uniform practice to prepare file copies in chronological file copies.

Senator BURDICK. But it is not very likely that Mrs. Beard made a copy of this one?

Mr. GENEEN. But her secretary could have.

Senator TUNNEY. Mr. Geneen, I do not know how you feel about it but I think that the shredder did you a great disservice. If we had the documents before us we would be able to evaluate their meaning and their import, and now we have to rely on the memory of those who would be acting contrary to their self-interest to remember that there were documents destroyed which would have been disadvantageous to them because they were embarrassing. I think that it would be quite unexpected to expect that an official of the Washington office would now admit that there was embarrassing document shredding, if you follow my meaning, and contrary to the thrust, at least as I understood the meaning of your statement, and contrary to the thrust of your answer to an earlier question of mine, I believe that the shredder did you a great, great disservice, because I think we should have all those documents before us. But I do feel that, just to get a better understanding of what happened, in the interest of trying to get at the truth of the matter, and I am not sure that I quite understand what happened, I will have to direct my questions now to Mr. Aibel, to Mr. Martin, because they were the ones who did the investigation.

Mr. Aibel testified that there was no one person who was the shredder, that each person went through their own files and destroyed documents based on the two principles for destruction. One was that the documents were aged and one that the documents were embarrassing. Then as I understood Mr. Martin's statement, he said there was just one shredder.

Now, I would like, if possible, to have you, whichever one can testify to this point, I would like to have you tell us step-by-step

what procedure you followed in your investigation, and Mr. Martin, I suppose, did more of the interviews than you did, Mr. Aibel. What steps did you follow? Whom did you interview? Why were they interviewed? What was the nature of the statements that were made by the individual whom you did interview?

Mr. AIBEL. Senator Tunney, if you will indulge my making a remark about one of your earlier statements, you are quite right in that the people who marked the documents, picked the documents for destruction, probably did not actually operate the shredder. When I spoke of the destruction of documents I was talking about the decision as to which documents were to be destroyed and I was not talking about the physical act of actually putting them into the machine any more than I was thinking about carrying the sacks down to the garbage place where they would be picked up.

But the volitional act of the decision as to which documents would be shredded, that was a great number of people.

Before turning the microphone over to Mr. Martin, I can tell you that the general instructions which were given were to examine the files and to review them and to talk to each person who had the responsibility for those files as to the circumstances under which the file review took place.

We had an understanding to the general areas of questioning which would be undertaken, and when, only after the initial reports came in we found we had to ask additional questions, and that was one of the reasons why we were not prepared yesterday while Mr. Geneen was testifying.

So, what we were doing is more or less doing this on an ad hoc basis for the purpose of preparing this report but without any particular written set of instructions.

Now, Mr. Martin, perhaps you can describe how it was carried out.

Mr. MARTIN. Yes. We just had a general overall concern about finding out what had occurred and what was done here, and that was done basically by speaking to the people involved.

Senator TUNNEY. How many people were questioned, all 19 people except for Mrs. Beard?

Mr. MARTIN. Well, there were people who were away, some people on vacation now.

Senator TUNNEY. How many people were on vacation?

Mr. MARTIN. Two that I know of. I cannot tell you that, Senator, but just let me explain. I had not any great familiarity with the Washington office prior to this, so I do not know what the position was of a lot of these people. What I tried to do to the extent that I could was to talk to each of the people who was there. This was done by, as I say, I am only one of four people. I know they attempted to interview all of the secretaries. That was done. We attempted to interview the professional staff, I suppose, if you want to draw a distinction, to ask them, you know, what they did, to ask them whether or not—what type of documents they were destroying, how they did it.

I think we should clarify one other thing is that not everything was run through the shredding machine. There was, you know, there is a shredding machine as Mr. Aibel's statement points out. There is a policy that certain things are to go through the shredding machine. A lot of this stuff was just dumped in wastepaper baskets and then transferred to larger bags.

Senator TUNNEY. In the course of your investigation, did you inquire why it was that these documents were not, for instance, put in boxes and then put under lock and key or sent up to the corporate headquarters in New York for safekeeping rather than destroying them, particularly the embarrassing documents, the so-called embarrassing documents?

Mr. MARTIN. Senator, I am sure that had Mr. Aibel or I been involved in the decision of what to do the next day that would have been done, something along that line may have been done. But it was not. This was simply a reaction in the fact that "Look, that Jack Anderson is rummaging through your files," and the people reacted to that set of circumstances.

Senator TUNNEY. Will it not be—

Mr. MARTIN. I do not think it was a very conscious—

Senator TUNNEY. I wonder if you understand this point. In other words, people were informed generally that Jack Anderson was rummaging through their files or had somebody rummaging through their files.

Mr. MARTIN. That is the possibility; yes.

Senator TUNNEY. The possibility, were they informed of that?

Mr. MARTIN. Well, they were informed that was the possibility.

Senator TUNNEY. That Jack Anderson had been rummaging—

Mr. MARTIN. What happened, Mr. Anderson—Mr. Hume had shown up with a memorandum that purported to come from ITT files.

Senator TUNNEY. Right. We had earlier testimony that five people knew about the Anderson-Beard memo relationship.

Mr. MARTIN. Contents.

Senator TUNNEY. The contents.

Mr. MARTIN. The contents of the memo. As I said, it was my impression the staff was generally aware Mr. Hume had been there, there had been some type of document involved.

Senator TUNNEY. And a highly incriminating document.

Mr. MARTIN. I do not know if that term can be used.

Senator TUNNEY. Applying a rule of commonsense. You have a staff meeting, and information is given to the employees to have them look through their files and they have got to destroy or eliminate documents which are aged or which could be embarrassing.

Now, just applying the rule of commonsense did you not, in your investigation, inquire whether or not the employees had more information than just that Mr. Hume had been there?

Mr. MARTIN. Did I?

Senator TUNNEY. Yes.

Mr. MARTIN. No.

Senator TUNNEY. Did any one of the three or four investigators go into that?

Mr. MARTIN. I cannot say.

Senator TUNNEY. All right.

Mr. MARTIN. I mean, I did not make the inquiry of people whether they knew. I was simply trying to get from them by asking what they were doing, why.

Senator TUNNEY. You realize, I am sure you must realize, how this thing looks on its face, do you not?

Mr. MARTIN. Well—

Senator TUNNEY. Do you realize how this thing looks on its face? Hume comes in with an incriminating memo, the next day substantial numbers of documents are shredded, particularly documents which could be embarrassing to ITT, on its face how it looks?

Mr. MARTIN. Senator, I think that an awful lot of people, and I am not talking about ITT, who might have the same reaction if they had any reason to believe that Mr. Anderson was rummaging through their files. I would not—you know, if somebody came in to me in any law office and said, "Gee, somebody is going through your files," I would be concerned and I would take action to see——

Senator TUNNEY. I would be concerned, too, but it does not mean I would automatically dump everything into a shredder.

Mr. MARTIN. I do not think everything was dumped.

Senator TUNNEY. Or anything that might be embarrassing. I might very well take all the documents and put them into a case of some sort and put them under lock and key in my own home.

Mr. MARTIN. But if they have no use why not just throw them out?

Senator TUNNEY. What do you mean if they do not have any use? You said that is one of the tests applied if they were embarrassing that they were destroyed. They could have been produced to this committee to prove clearly that there had not been any documents or any memos in the files which would be incriminating. Did your investigation reveal whether anyone refused to destroy documents?

Mr. MARTIN. As far as I know, no.

Senator TUNNEY. And as far as you know. Now, do you know?

Mr. MARTIN. Everyone that I talked to said that they reviewed their files, with the exception of perhaps one or two people who said they did not really have any files. I am just trying to—you know, there was no—If I get the understanding of your question was there anybody who refused to do this as a positive act, the answer is "No."

Senator TUNNEY. Did you ask the other three investigators whether they specifically knew of whether any one individual did not want to do it?

Mr. MARTIN. No, I do not know, I did not ask.

Senator TUNNEY. So, from the number of people you talked to you do not know of anyone who refused to go through their files?

The CHAIRMAN (presiding). We are going to adjourn now until 10:30 next Wednesday. Our brethren on the left want to have a conference.

(The Republican members of the committee were seated to the chairman's left.)

(Whereupon, at 3:45 p.m., the hearing was recessed, to reconvene at 10:30 a.m. on Wednesday, March 22, 1972.)

(The committee subsequently determined to reconvene subsequent to the return from Denver, Colo., of the subcommittee appointed to hear Mrs. Dita Beard.)

RICHARD G. KLEINDIENST

SUNDAY, MARCH 26, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SPECIAL SUBCOMMITTEE,
Denver, Colo.

The special subcommittee met at 9:35 a.m., in the conference room, Rocky Mountain Osteopathic Hospital, Denver, Colo., Senator Philip A. Hart, chairman, presiding.

Present: Senators Hart (presiding), Kennedy, Burdick, Tunney, Cook, and Gurney.

Also present: John H. Holloman, committee chief counsel, James Flug, subcommittee majority counsel, and David Huber, subcommittee minority counsel.

The CHAIRMAN. We will come to order. This is a subcommittee of the Judiciary Committee of the Senate, directed to take testimony from Mrs. Dita Beard with respect to the matter of the alleged ITT contribution to the Republican Convention effort and the resolution of an antitrust settlement.

The setting is unusual and uncomfortable for all of us, and I think for the understanding of all, including those outside the room, I should outline the circumstances under which we come, and ask that the record be corrected if in any respect I have omitted or made a mistake.

Based on an exchange of telephone conversations and wires between the staff of the committee and the physicians in charge of Mrs. Beard, it had been planned that we be here to take this testimony a week ago. The subcommittee determined that in view of the vote that would occur on the women's equal rights amendment, it would be necessary that we cancel that schedule, which we did, and then fixed today as the beginning for the proceeding.

None of us on the subcommittee are qualified to make any medical judgment, but conscious that our obligation even more primary than attempting to obtain a record which would enable the Senate to make a conclusion, our obligation even before that, was to insure that our action would not disadvantage Mrs. Beard physically.

Telegrams were exchanged to establish some limitation and, if you will, ground rules. Those telegrams, which I shall ask be made a part of the record, indicate that it was the judgment of the physicians in charge of Mrs. Beard, Dr. Garland, and Dr. Radetsky, that the number of persons present in the room today and the facilities, including the tape and the court reporter, would be acceptable from a medical judgment.

(The telegrams referred to follow:)

[Telegrams]

DENVER, COLO., March 20, 1972.

Chairman JAMES O. EASTLAND,
Care Tom Hart
Senate Office Building, Washington, D.C.

DEAR SIR: As requested by Chairman Eastland this is to confirm the following physical conditions agreed upon by telephone with Mr. Tom Hart.

Seven committee members; three committee staff; one official committee recorder; one sound man to make two tapes of proceedings, excepting that part off the record, one for press and one for Mrs. Beard; one pool news photographer for one still nonflash picture, who will be relieved by one pool newsman for coverage of proceedings.

Proceedings to last no more than one hour per day for each of two days, with her doctors in attendance, Doctors prerogative of recessing or stopping proceedings if Mrs. Beards' condition shows definite signs of excessive cardiovascular stress which would endanger her life or future health as so prognosed.

Would appreciate if the Senators will be able to proceed with minimal emotional stress to Mrs. Beard, as requested by your cardiac consultants.

Hope this meets with your approval.

DAVE GARLAND, D.O.

DENVER, COLO., March 20, 1972.

Hon. JAMES EASTLAND,
Care Tom Hart,
New Senate Office Building, Washington, D.C.

This is to reconfirm changes in prior telegram from Dr. Dave Garland. One still photographer without flash may take series of pictures before start of hearing. One tape recording only will be made. Tape will be property of committee. Recording will only be made of testimony on the record tape. Will later be played once for all news media. Tape will be available to Mrs. Beard and counsel.

DAVID FLEMING.

DENVER, COLO., March 20, 1972.

Chairman JAMES O. EASTLAND,
Care Tom Hart,
Senate Office Building, Washington, D.C.

This is to acknowledge two changes in format of proceedings. One sound man to make a tape of proceedings instead of two tapes. Tape to be owned by Senate Judiciary Committee. One photographer for still nonflash pictures before proceedings begin. It is understood that Mr. Fleming agreed to these changes.

DAVE T. GARLAND, D.O.

Senator HART. We late last week learned from a wire that we were authorized to and there was approved this hearing, but to be limited to 1 hour for 2 days. I, after some discussion with the subcommittee, telephoned Dr. Garland and in the course of several telephone calls I talked also to Dr. Radetsky. I made the point that we understood that Mrs. Beard wanted this over with and all of us understand why. We were cautioned in that wire to avoid unduly emotional—"We would appreciate it if the Senators will be able to proceed with minimum emotional stress to Mrs. Beard."

I explained to her physicians that two sessions of 1 hour each would not in all likelihood permit us to address the questions we feel an obligation to address, and we were uneasy no matter how we phrased them there would be an emotional stress.

In the conversations with both Dr. Garland and Dr. Radetsky, it was my understanding that from a medical judgment it would be of benefit to the patient and certainly was her desire that we nonetheless come out and Dr. Radetsky indicated that his obligation to his patient

permitted him to extend the time to 3 days, rather than 2, and to have examination of one and a half hours, with time interval between each day.

Based on that, it was the conclusion of the subcommittee to proceed.

May I inquire if my recital fairly states the circumstances under which we assemble?

TESTIMONY OF DITA D. BEARD, ACCOMPANIED BY DAVID FLEMING, ATTORNEY AT LAW; HAROLD E. WHITE, ATTORNEY AT LAW; DR. LEO M. RADESKY; AND DR. DAVE GARLAND

Dr. RADETSKY. Yes.

Dr. GARLAND. Yes, sir.

Mr. FLEMING. Yes, sir.

Mr. WHITE. Yes, sir; we agree.

Chairman HART. Do any of my colleagues have additional comment?

Senator BURDICK. Did Mrs. Beard agree?

Mrs. BEARD. Yes, sir; this has all been a horrible mess. It has got to be straightened out.

Chairman HART. We will try and do it.

Mrs. BEARD. I hope so, sir.

Chairman HART. I shall then proceed, all of us understanding the circumstances that bring us here.

Mrs. Beard, do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mrs. BEARD. Yes.

Chairman HART. Mrs. Beard, there was furnished to the subcommittee a statement by you. Under our rules, that statement can be addressed, voiced by you to the subcommittee, or you can summarize it or it can be filed for the record in full as though given. Copies of it will be made available to the press.

Mr. FLEMING. Mr. Chairman, I am David Fleming. With me is my law partner, Harold White, of White, Oberhansley & Fleming. We represent Mrs. Beard. She has requested that I read the statement to the committee on her behalf.

Chairman HART. There is a reluctance, I know, to in a sense obtain the testimony by proxy.

Mrs. BEARD. I thought this might simply shorten your question period, not the period, but might answer some things that you would not ordinarily have to bother to ask in view of the time.

Chairman HART. We, I should say, have read the statement and could, based on the statement which is now in our hands, begin to address the questions to you.

Mr. FLEMING. If that's permissible with everyone, as though the statement were——

Senator COOK. May I say, in all fairness, if you want to read it into the record for your client, I have no objection to your doing so. Obviously, it is not that it may be by proxy, but at least your client is next to you, and under those circumstances if you would feel that you want to read it into the record at this time——

Mrs. BEARD. I would like to, but I can't be sure how long I am going to hold up. I seem to be better one day and then I am not.

Mr. FLEMING. We would like to read it into the record.

Mrs. BEARD. Just want to help as much as I possibly can.

Chairman HART. We have the time problem. Admittedly, that's one of the reasons that I was suggesting that we could spare the——

Senator COOK. Of course, let me say this, Mr. Chairman: The first thing the press is going to hear when they get out of here is the tape, and I think they ought to hear Mrs. Beard's statement on that tape and I think they ought to hear it before any questions are asked. That's my only problem with submitting it to the record. If they wish to base an analysis of any of the questions and any of the replies thereafter on anything they may do, then I think that they ought to have her statement and they ought to have the opportunity to hear that statement.

Chairman HART. I'm sure you are both an eloquent reader and a rapid reader. It is simply a desire to reserve as much time for the questions——

Mrs. BEARD. I wouldn't consider it an effort of time.

Mr. FLEMING. May I proceed?

Chairman HART. Go ahead.

Mr. FLEMING (reading for Mrs. Beard). Mr. Chairman and members of the subcommittee, I first want to state that I appreciate your concern for my physical condition which has prevented me from returning to Washington, D.C., to testify before the full committee at the outset of these hearings. As Dr. Garland stated in his report to you, when he first saw me in Denver on the late afternoon of Friday, March 3, 1972, I requested then that I be allowed to return to Washington. Since his diagnosis indicated that because of my recurring heart condition I was in immediate danger of a massive coronary, he ordered me to this hospital. I want to make my doctor's statement a part of the record. I frankly don't remember the facts surrounding that first encounter with Dr. Garland. I was in considerable pain and had taken several nitroglycerin pills, together with Valium tablets and alcohol to ease that pain.

(The statement referred to follows:)

To: Senator Eastland, Judiciary Subcommittee, U.S. Senate.

On Friday, March 3rd at about 3:00 P.M. one of my patients, Mr. Robert McCall, called me to ask if I would be willing to make a call on a friend of his who was from out of town. He thought she might be in need of medical attention. I said I would if she needed it. He said he would call back if his friend was willing to have me come.

At about 5:00 P.M. the same day Mr. McCall came to my office stating that he would appreciate it if I would go see Mrs. Beard because she was having chest pain and had a known heart problem. He said she would like to have a Doctor's attention.

I saw the last two patients for the day in my office and proceeded in my car to the motel where Mrs. Beard was at that time. Mr. McCall came in his car.

When we entered the motel unit Mr. McCall introduced me to Mrs. Beard and her daughter. This was the first time I had ever had any contact directly or indirectly with Mrs. Beard or her daughter or had ever heard of them. Mrs. Beard seemed in a state of acute anxiety and was clutching her left upper chest and shoulder with her right hand during most of the time I was there with her. She complained of pain in these areas and related that she had had trouble with her heart for several years.

She stated that she had trouble for a short time the day before when flying into Denver and that the pain had started again late the morning of the 3rd of March. She had taken at least five and possibly more than seven nitroglycerin tablets in the past six hours and had also taken two 5 mgm valium tablets and several shots of whiskey. None of these had given her adequate relief of her chest pain. I asked

her how much alcohol she had used and she and her daughter estimated less than one half pint.

I assumed that most of Mrs. Beard's anxiety related to her concern about her pain and the state of her health, but during the time there I recognized that she was under strain and distress about some business problems and she expressed concern about getting back to Washington as quickly as possible to answer a subpoena that she thought might be forthcoming.

My examination found a blood pressure of 144/78, a pulse regular, at 106 per minute and her heart rate was the same. There was no muffling of the sounds and the systolic and diastolic phases sounded essentially normal. Her lungs sounded clear and there was no abdominal pain or tenderness. She looked somewhat pallid and there seemed to me a suggestion of cyanosis to her lips.

My primary concern at that time was that she was having acute angina pectoris, unremitting, and might soon or may already have developed an acute coronary thrombosis. I told her, her daughter and Mr. McCall that she should be hospitalized immediately. I also stated that I would want to talk to her physician in Washington. They offered to call him right there, which we did. He confirmed that she had chronic coronary artery disease and agreed that with the unremitting pain that we described she should be in the hospital. He said he would try to get to Denver as soon as possible.

Mrs. Beard agreed to go to the hospital and I walked to my car, brought it to the front of the motel unit and went back in to help Mrs. Beard to the car. Her daughter went with us to the hospital. She was placed in the Coronary Care Unit of Rocky Mountain Osteopathic Hospital. Dr. L. M. Radetsky was called by me in consultation.

My impression, shortly after hospitalization and after early consultation with Dr. Radetsky, was that Mrs. Beard had sufficient signs of acute coronary insufficiency; considering her past and present history, physical findings and electrocardiograph tracings, that she should be treated diligently for her problem. Every attempt should be made to preclude a coronary thrombosis and/or minimize the effects of a thrombosis which might already be present with recognizable physical, cardiographic and laboratory evidence not yet demonstrable.

After the patient was hospitalized and well taken care of, I took Mrs. Beard's daughter to the McCall residence, then drove home.

Shortly after arriving at home, an F.B.I. agent called to ask if the name Beard meant anything to me. I told him that I had just hospitalized her in the Coronary Care Unit at Rocky Mountain Osteopathic Hospital with acute coronary artery disease.

The following statement concerns Mrs. Beard's hospitalization, medical care, Coronary Care Unit care and full medical management in Rocky Mountain Osteopathic Hospital Coronary Care Unit from March 3rd, 1972 through March 12, 1972: Dr. Radetsky was called to see Mrs. Beard in Cardiac Consultation by Dr. Dave Garland on March 3, 1972, at which time Dr. Radetsky saw her in the Coronary Care Unit and performed a complete cardiac evaluation, findings of which showed angina pectoris, acute, with arteriosclerotic heart disease.

This patient is a 53-year-old white female, admitted to the hospital by Dr. Garland and Dr. Radetsky. Admission was for symptomatology and symptom complex of acute chest pain with substernal oppressions, radiation of pain to the left shoulder, left arm and left hand.

Patient was placed in the Coronary Care Unit, treated with watchful expectancy and intensive care, utilizing anticoagulation therapy consisting of Heparin and Coumadin to full effect, to anticoagulate her blood and increase her coronary circulation and collateralization. Patient was placed on Isordil and Cardilate therapy to full effect to affect vasodilatation of the coronary arterial tree. Patient had continuous chest pain for the first three days in the hospital, after which time the chest pain subsided and her symptom complex was pretty well normalized. EKG's taken the first two days were not conclusive of a current of injury, however, there was a flattening and triphasia of the T-waves noted, with flattening and hypoxic phenomena.

On the sixth day of her hospitalization in the Coronary Care Unit she experienced an attack of multiple premature ventricular contractures of extensive nature, preceded by severe dyspnea, followed by severe chest pain and then followed by severe premature ventricular contractures of multiple type.

These premature ventricular contractures appeared to be coming from the left ventricle and for this reason this patient was given Xylocaine therapy to full effect, intravenously, to prevent ventricular fibrillation which occasionally occurs when the left ventricle suddenly develops premature ventricular contractures.

Patient experienced relief with the Xylocaine therapy intravenously. The chest pain, and substernal oppression, together with the severe anxiety apprehensive facies, disappeared after the Xylocaine infusion was given. Cold diaphoresis, also previously present, was alleviated.

Patient was then placed on Pronestyl therapy orally, 0.25 gm or 250 mgm, four times a day to effect a sedative reaction in the ventricular muscle to prevent further multiple premature ventricular contractures. Patient responded quite well to Pronestyl therapy and was taken out of the Coronary Care Unit on March 12, 1972, at which time she was placed in a private room and given further anticoagulation therapy consisting of Heparin. The Coumadin was discontinued because of her development of a rash and cutaneous pruritis. Patient was placed on medication for her pruritis and her skin condition and responded fairly well to this situation, without any great number of re-exacerbation.

On the same day as her being taken out of the Coronary Care Unit, two cardiologists from the Denver Medical Society, and the Denver area, came in to see and examine Mrs. Beard. Mrs. Beard was examined fully and extensively by these two qualified cardiologists and their report confirmed the finding of angina pectoris, and also confirmed the medical regimen and medical management of this patient. It is our considered opinion that Mrs. Beard has angina pectoris and also has a situation whereby her anxiety status sometimes does not exacerbate the situation as far as her angina pectoris is concerned.

Angina pectoris with arteriosclerotic heart disease is the diagnosis, and also a possible prediabetic status. She is now resting quite well and is in a convalescent phase. It is our considered opinion, and this includes all four doctors that examined Mrs. Beard, that she cannot now or in the near foreseeable future travel to Washington to testify in a Hearing as far as her case is concerned. It is recommended that if this testimony is necessary, or interrogatory type of testimony is necessary, that it be taken at the bedside here with the attendance of a physician during the time the testimony is given.

Prognosis on this case is believed to be fair to good, if the patient is kept free from strain and also kept free from sudden shock status. At the present time, neither Dr. Radetsky or Dr. Garland think that Mrs. Beard will be able to travel for the next month.

It must be further emphasized here, that this is the first time Dr. Radetsky or Dr. Garland have ever been contacted directly or indirectly by Mrs. Beard or her daughter or from any of her family, also that they do not have any connection whatsoever with I.T. & T. in any capacity or by any direct or indirect means or methods.

It is undetermined when Mrs. Beard will be able to appear before a full Senate Committee for testimony. Again, we do feel that she is able, at this time, to have testimony taken at the bedside, either in the form of an interrogatory or direct testimony to a limited number of subcommittee members.

This statement is given jointly by Dr. Garland and Dr. Radetsky, March 14, 1972.

DAVE GARLAND, D.O.
L. M. RADETSKY, D.O.

I have never sought to run away, hide, escape, or make myself unavailable to this committee. It was my intention on leaving Washington, D.C. on the morning of Thursday, March 2, 1972, to get some rest which I desperately needed because of my heart condition and on advice of my doctor. When I heard that there might be a subpoena issued, I made every effort to return.

I have withheld making statements, other than the statements which I authorized my attorneys Mr. Harold White and Mr. David Fleming to make on my behalf on March 10, 1972, and March 17, 1972, until I had the opportunity to testify before you, because I feel that you, the members of the Committee on Judiciary of the U.S. Senate, must have my first words as to the truth and the whole truth of this matter.

I am not unfamiliar with the import and gravity of testimony before a congressional committee. I am further equally familiar with the penalties of perjury. Therefore, the oath which I have taken is

sacred to me and what I am about to say is the truth, the whole truth, and nothing but the truth.

I did not write, compose, or dictate the entirety of the memorandum which Mr. Hume presented to me in the Washington office of ITT last month. I do recall similar language in the first part of that memorandum which I wrote at sometime in late June or early July of 1971, at the request of Mr. Merriam.

When I was first shown the Anderson memorandum by Mr. Hume, this was the situation and my state of mind:

I had been informed by Mr. Hume that he had obtained from my private and personal files a memorandum which he said I wrote, that was incredibly damaging to me and to my company. This conversation occurred over the telephone.

He asked me, if he could meet me, and I readily agreed. We met in the conference room of the Washington office of ITT shortly before noon on or about February 23, 1972. With Mr. Hume and me in the conference room were Jack Horner and Bernie Goodrich, ITT employees. I was obviously overcome with curiosity and an understandable sense of alarm that such a situation could have occurred. Hume reached into the inner pocket of his suit coat jacket and produced two pages which were folded and he slowly opened them. I glanced at the top of the first page and noticed it was on standard memorandum paper of the Washington ITT office. The type on the pages was similar to that of the standard executive typewriters in our office. I noticed the memorandum was written to Mr. Merriam from me and I glanced at a penciled initial "D" which appeared following my name. I did not study the top of the memorandum any further, since my anxiety was, of course, to read what was in it. I began to read it rapidly. Some of the language, the general subject matter of the first paragraph looked familiar. At that moment I had no reason to assume that this was not a memorandum written by me. He asked me if I had written it. I had not yet fully read it, or taken the time to study it. I acknowledged that it looked like my little "D".

As I read on, particularly the last paragraphs, I became shocked and obviously flustered. Some of the language brought back absolutely no recall because it set forth allegations about which I had no knowledge.

The first thing I requested was to immediately look at my chronological files to see if there was a copy of a similar document and further to see what documents there might be in said files before or after the date of the memorandum to try to refresh my memory as to facts and circumstances in that time period, so many months before. I went back to my office with Mr. Goodrich, Bob Schmidt, and two secretaries and looked at my chronological file. There was no copy of any such memorandum and, in fact, there were no letters or memorandums around that date. Also there were no copies of same which would logically be in my subject files.

I returned to the conference room with Mr. Hume and with Mr. Horner and Mr. Goodrich and began to read the memorandum slowly. He asked me to explain the identity of the people that were mentioned in the memorandum. I stated as best I could who the people were that the document must have been referring to. He further asked me to explain what each line meant. I attempted to analyze the document line by line. The first two paragraphs made

some sense and gave me certain recall, as did a portion of the third paragraph, but thereafter, I was at a loss to explain what was meant and so informed him.

I was never aware of, or conversant with, any facts or information which would lead me to believe there was any connection, direct or indirect, between the assistance proposed by Sheraton to the San Diego Convention Bureau and a favorable settlement of the anti-trust suits. I told Mr. Hume I couldn't understand that language and I didn't know what it meant. I was in a state of emotional distress and literal shock. I remember commenting to the effect that this looks like my D, but I couldn't see how I could have written the memo. I now state categorically to this committee that I did not write the Anderson memorandum.

Mr. Hume then left me a copy of the document from which copies were made in the Washington office. The copy he left is now in the hands of my attorneys.

These thoughts began to haunt me: Who was doing this to me and why? How had this document gotten into Mr. Hume's hands? I began to distrust everyone in the office. I felt utterly alone.

The following day Mr. Hume called and requested another meeting with me. I was extremely distraught. I felt certain that someone was deliberately putting me in a position to be used as a vehicle to embarrass the administration, embarrass my company, and to destroy me. Mr. Gerrity called me and I reported to him that Mr. Hume wanted to talk to me again. I asked Mr. Gerrity that I not be required to talk to Mr. Hume until we got to the bottom of this. He insisted I meet with Hume and tried to assure me that I could somehow explain it. I told him, "I couldn't." He told me, "you've got to."

Hume called my house early in the evening of February 24, 1972, and said he was coming over, and arrived a few minutes later. In the meantime, I called my doctor and asked him to come by. I was highly distressed. I have had a heart condition for some years, and I was, frankly, afraid of what a prolonged encounter would do. I had taken a Valium tablet, which is a barbiturate. My doctor had prescribed them.

I could picture the total ruination of myself, my family, our financial security, together with incredible detriment to my company and to a man I revere and respect, my company's president, Mr. Harold Geneen. I was in a state of total despair. I know all too well, the viciousness of certain reporters in Washington and the fact that they care nothing of damaging human beings, but only of getting a "story." I began to drink. By the time Mr. Hume arrived I had a feeling of utter desperation.

Walter Benning was in town. He works for ITT in Fort Wayne, Ind., and we have known each other for some years. He, along with my secretary, Beverly Sincavage, were with me at the house throughout the time Hume was there. My youngest son was present in the kitchen from time to time and Dr. Liszka arrived later on in the evening.

Mr. Benning and Beverly heard my conversation with Hume.

I recall Hume saying that there was someone trying to set me up. I kept saying I didn't know what it was all about. I asked Mr. Hume where he got the memo and he said, "Who did you give it to?" I told him again and again the memo wasn't mine.

I said, "Who in their right mind would write something like this? This isn't mine."

He said over and over again, "I don't care what you say—I'm going to prove a connection between San Diego and the settlement, and I'm going to use you to prove it."

I did tell Mr. Hume that I recalled writing a memo sometime around that date about the convention but not this one.

I tried to explain to him I had no knowledge of any connection between the pledge by Sheraton to the convention bureau in San Diego and the antitrust settlements. For 2 hours, despite the fact that I again and again asked to be left alone, he continued to grill me. Several times when I began to break down, he seemed to relent by saying, "Well, maybe there isn't a story here after all."

I do recall breaking down and crying hysterically and leaving the room. Beyond that point, I cannot recall very much of what I said, except asking him again and again, "Why are you trying to destroy me?" I recall some conversation about the Kentucky Derby after he asked me about it and my conversation with Mr. Mitchell, but I can in no way recall what I said to Hume. I do know that I was trying desperately to convince him of something that I knew was the truth—namely, the lack of any connection between the antitrust cases and the pledge to the San Diego Convention Bureau. I had had several drinks. I was suffering intense chest pains at that time.

The following day, Friday, February 25, 1972, Hume called me on the phone in midafternoon and asked me the details of a so-called deal I had made with Attorney General Mitchell at the Kentucky Derby party on May 1, 1971—a deal whereby the antitrust suits would be settled. When he called, I was in full control of my faculties and told him, "What deal?" I said, "I made no deal—are you out of your mind?" He replied that I had told him about a deal the night before. I replied, "I couldn't have, there was no deal," and I further said that such a thing was absurd. He then dropped that subject, and asked for the date that I had discussed the possibility of the convention with Hal Geneen, and the date of the Kentucky Derby party. I told him I would provide those dates.

He called again on Saturday, February 26. By this time I had suffered another attack. I was in bed, having taken tranquilizers and medicine under my doctor's direction and I told him I was too ill to talk to him. However, I did tell him that the date I talked to Hal Geneen about the convention was May 12 and the Derby party was May 1.

On Monday, February 28, I was instructed by Mr. Gerrity to come to New York. I spent part of Tuesday and Wednesday, February 29 and March 1 in New York. I told Mr. Gerrity and others that I could not explain the Anderson memorandum, in spite of Mr. Gerrity's assertions that I had written it.

It was my impression that they did not believe me. I knew it was not my memo but I had no way to prove it without assistance which had to come from ITT and which was not tendered at that time.

I asked time and time again to talk to Mr. Geneen, but was prevented from doing so. On Wednesday afternoon, March 1, I announced to Mr. Gerrity and Mr. Jack Hanway, Mr. Geneen's assistant, that I was going away for a rest to West Yellowstone. I had not had a vacation in many years. I was told to keep Bill Merriam

informed as to where I would be. I could not reach Mr. Merriam that night, but I had told Mr. Gerrity I could be reached through my daughter. I returned to Washington that night and on Thursday, March 2, I left by plane with the intent of changing planes in Denver to fly to Bozeman, Mont., and taking ground transportation to West Yellowstone. I suffered another attack on the plane. I was attended by a stewardess. This is the reason for my presence in Denver.

I am informed that the committee has been told of a certain meeting between former Attorney General John Mitchell and myself in Kentucky.

The facts surrounding my encounter with Mr. Mitchell are as follows:

I had been invited by written invitation as in years past by Governor and Mrs. Louie Nunn to attend the Kentucky Derby and the party following the Derby at the Governor's mansion.

Mr. Mitchell was among those present at the buffet that evening.

I approached Mr. Mitchell two or three times that evening and told him I was unhappy about the way the Justice Department was treating my company. He told me each time that he couldn't discuss it with me; he had disqualified himself from the case and the proper approach was to leave it to the attorneys.

My persistence resulted in my being told the last time to quit lobbying him, or words to that effect. Shortly thereafter, during dinner, I had severe chest pains, necessitating my taking a nitroglycerin pill and leaving the party.

Next, referring to a news release issued by ITT March 20, 1972, regarding what is called in that release the "genuine Beard memorandum" dictated by me on June 25, 1971, I hereby submit an affidavit of Susan Lichtman, my secretary during that period of time surrounding June 25, 1971.

This affidavit, dated March 23, 1972, verifies her previous affidavit on file with the committee. It further discloses another fact proving the the Anderson memorandum is not my memorandum.

In paragraph 7 of this affidavit, she states:

When I was first shown the "alleged memorandum" by a representative of International Telephone and Telegraph Corporation, I was skeptical of my having typed the "alleged memorandum" as the word commitment was misspelled in four different places, it was spelled "committment"; the correct spelling is commitment.

I would further call the committee's attention to paragraph 12 of this affidavit which corrects any misunderstanding arising from the ITT news release of March 20 wherein the "genuine" Beard memorandum is mentioned. It states:

I have been shown by Mr. Harold E. White, cocounsel for Mrs. Dita Beard, a draft memorandum relating to a job description referred to in the International Telephone and Telegraph Corp. press release of March 20th, 1972 at page 2 as "the genuine Beard memorandum", dated June 25th, 1971 addressed to W. R. Merriam from D. D. Beard. I do not recall typing it in final form for Mrs. Beard. It is definitely not the memorandum I refer to in paragraph 8 of my statement under oath dated March 18th, 1972.

I want this committee and the world to know that the Anderson memorandum is not my memorandum, that I am innocent of any wrong-doing and that I shall spend the rest of my life, for however long that might be, in an unceasing effort to find out who did this to me and why.

(The affidavit referred to follows:)

AFFIDAVIT

In the Matter of an "alleged" memorandum from D. D. Beard to W. R. Merriam, dated the 25th day of June, A.D. 1971

CANADA, PROVINCE OF ONTARIO, JUDICIAL DISTRICT OF YORK, *to wit:*

I, Susan Lichtman, presently residing in the City of Toronto, in the Municipality of Metropolitan Toronto, Canada, do hereby freely and voluntarily, without compensation, reward or favour of any kind whatsoever, DO SOLEMNLY DECLARE THAT:

1. On the 18th day of March, 1972 while under oath I made several statements concerning my employment at International Telephone and Telegraph Corporation and my working for Mrs. Dita Beard during the period from May 24th, 1971 through about July 14th, 1971, all of which was reduced to writing and signed by me. I now understand that such a statement in writing has been introduced into the record of the United States Senate Committee on the Judiciary's hearing on the nomination of Richard G. Kleindienst to be Attorney General of the United States.

2. This supplemental statement is being given to counsel for Dita Beard to further add to my prior statement concerning my knowledge of the "alleged" memorandum dated June 25th, 1971 referred to in my first written statement of March 18th, 1972.

3. As previously stated in the above referred to statement, I did work on June 25th, 1971. I might have typed such a memorandum on that date, although I am not sure. To the best of my knowledge, I do recall typing a memorandum dealing with the San Diego Convention containing sentences through the sentence "but certainly some". Beyond that I have no independent recollection other than to state that I do not recall typing "please destroy this, huh?" on the second page of the "alleged memorandum" nor do I recall the letter "D" shown on the first page of the "alleged memorandum" nor can I remember what procedure I followed after typing the memorandum. As to the "personal and confidential" at the top of both pages of the "alleged memorandum", I can't remember typing "personal and confidential" or not. At that time I did have a rubber stamp with such words on the stamp for just such use, but I can't recall using it or not.

4. The day of June 25th, 1971 wasn't a particularly eventful day. That Friday morning I was the only one in the office of the secretarial staff as well as for the remainder of the day because of the Lombardi Memorial Golf Tournament.

5. The typewriter I used at my desk was an IBM Executive model. There was a mixup on typewriters that week. Through another secretary, Miss Sincavage, I previously arranged to borrow a typewriter from another part of the office to assist in typing tournament invitations. The date of the tournament was June 25th, 1971.

6. I am in the habit of reading everything I file. I believe I would have known about any anti trust deal or connection of the anti trust suits with the Convention had it been talked about in the office.

7. When I was first shown the "alleged memorandum" by a representative of International Telephone and Telegraph Corporation I was skeptical of my having typed the "alleged memorandum" as the word commitment was misspelled in four different places. It was spelled "committment"; the correct spelling is commitment.

8. Since first being shown the "alleged memorandum" on March 2nd, 1972, I've consistently said that I didn't remember the latter part of the memorandum dealing with "Louie re Mitchell, mergers, the president and Mitchell nor McLaren's mickey mouse". Neither do I recall the statement "we all know Hal and his big mouth! But this is one time he can not tell you and Ned one thing and Wilson (and me) another." or the next to last sentence on the second page of said "alleged memorandum".

9. I consider that I have a very good memory and I habitually read what I type and file. Until I was contacted by Mr. Harold E. White, co-counsel for Mrs. Dita Beard on March 20th, 1972 by telephone, there has been no contact between Mrs. Dita Beard and myself or any of her representatives.

10. In all my personal contacts with Mrs. Beard I have found her extremely loyal to International Telephone and Telegraph Corporation and to the Republican Party. We occasionally had exchanges concerning political issues and differences of opinions as to politics.

11. It was my usual practice in doing Mrs. Beard's work that in routine matters I would make the original and a pink copy for her file. On personal and confidential

correspondence I might or might not have made a pink copy. In any event on any matters I knew of her asking that the correspondence to be destroyed, I don't think I would have made a pink copy.

12. I have been shown by Mr. Harold E. White, co-counsel for Mrs. Dita Beard a draft memorandum relating to a job description referred to in the International Telephone and Telegraph Corporation press release of March 20th, 1972 at page 2 as "the genuine Beard memorandum", dated June 25th, 1971 addressed to W.R. Merriam from D.D. Beard. I do not recall typing it in final form for Mrs. Beard. It is definitely not the memorandum I refer to in paragraph 8 of my statement under oath dated March 18th, 1972.

13. I have made this statement voluntarily and acknowledge and affirm that the contents contained therein are true and correct to the best of my knowledge.

14. AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "The Canada Evidence Act".

SUSAN LICHTMAN,

PAUL D. COPELAND,
A Commissioner, etc.

[SEAL]

Declared before me at the City of Toronto, in the Municipality of Metropolitan Toronto, this 23rd day of March, A.D. 1972.

Mr. FLEMING. Mr. Chairman, I present to the committee the original document, together with the affidavit.

Chairman HART. May I ask now of the physicians whether the treatment which has been, is and will be administered to Mrs. Beard leave her in full possession of her faculties and is she physically permitted to proceed and are we in a position to understand and treat the testimony as one coming from a person in full possession of her faculties and may I ask, doctor, in order that all of us be protected that that answer be given under oath?

Do you swear that the testimony you shall give in the proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Dr. GARLAND. I do.

Dr. RADETSKY. I do.

Chairman HART. My question, gentlemen, is whether the medication and treatment being given Mrs. Beard under your direction leaves her in full possession of her faculties with respect to any discussion and answers that we may receive?

Dr. RADETSKY. Yes, sir, indeed, she is in full possession of her faculties. She is not oversedated. She is on a mild tranquilizer, as she has been for the last month. I do believe she is very lucid. She is certainly in command of her capacities to speak and think.

Chairman HART. And to underscore a point, and this reflects the uncomfortable position all of us feel, in my opening statement I made reference, doctor, and I now shall address it directly to you, when we had our conversations and exchanges of communication and I indicated an awareness based on your statement that Mrs. Beard wanted to get this over with, we were concerned that within the time frame it might not be possible. We could not promise that it would be concluded within the time frame. You indicated that you would still hope that we would come out.

Dr. RADETSKY. That is true.

Chairman HART. Mrs. Beard, when were you first employed by ITT?

Mrs. BEARD. In 1961, June 7.

Chairman HART. And in what capacity?

Mrs. BEARD. At the time I was hired as a secretary. We were just opening the Washington office. Mr. Geneen had been present I think a year, no more, and he had wanted his own Washington office.

Chairman HART. After you entered the employment, what change in position and role developed?

Mrs. BEARD. Well, within a very short time I realized none of them knew the name of the game in Washington. They had no political representation. They were babes in arms. They didn't realize that you—well, as most lobbyists do, you have to know what is going on in Washington or you can't run a company, and I suppose it was in less than 6 months I began making contacts on Capitol Hill.

Chairman HART. You have been in the Washington office throughout the period since 1961, is that correct?

Mrs. BEARD. Yes, sir, I have traveled a great deal, but my office has been there, yes, sir.

Chairman HART. What is your salary?

Mrs. BEARD. I'm not even sure of that one anymore. It is a base salary of—it just went up. I think the base salary is \$28,500, or \$30,500, and then there has always been a bonus system, depending on your years' prior work.

Chairman HART. Did you receive a bonus at the end of the year of 1971?

Mrs. BEARD. That was last year, yes, sir. No, it was given in March. Bonuses are in March for everybody that is on the bonus system.

Chairman HART. And you have received bonuses without omission since—

Mrs. BEARD. Since 1961, yes, sir.

Chairman HART. Are you—

Mr. FLEMING. Excuse me, one moment, Mr. Chairman, I think we better clarify if Mrs. Beard has received a bonus this month of March for 1971.

Chairman HART. I assumed from her answer that she has not. You go ahead and clarify it.

Mrs. BEARD. No, I have not.

Chairman HART. So that the March bonus reflects additional compensation for the services for the prior calendar year?

Mrs. BEARD. Yes, sir.

Chairman HART. And the bonus for the calendar year 1971 in your case has not been paid?

Mrs. BEARD. No, sir, it would normally be in the bank right after the first board meeting, which I think is the first Monday of March. Anyway, our bonus checks are always in our banks by the 15th of March.

Chairman HART. So that if you receive the 1971 bonus in normal course you would have received it by now?

Mrs. BEARD. Yes, sir.

Chairman HART. Do you have any idea what treatment will be given that bonus situation?

Mrs. BEARD. No, sir, I certainly don't.

Chairman HART. Are you the registered or a registered lobbyist for the ITT?

Mrs. BEARD. Yes, sir. I believe I am—well, I am the only lobbyist, really. We have a lot of young men that are sort of—I think Senator

Kennedy and Senator Tunney know one particularly well, Bob Schmidt, very good friends, but I am the registered lobbyist, yes, sir.

Chairman HART. What is the scope of your duty with ITT?

Mrs. BEARD. Seems to be everything from sweeping the floor on up, sir. It has changed over the years since our staff has grown. I have—anything connected with Capitol Hill or various States. For instance, I go to all the Governors' conferences. I know most of the Governors extremely well. ITT being the size it is, we might have a problem here and there, and quite a lot of experience, as most of you all will agree, from the ecology benefit, water, ecology, and those things have been great concern to most of the Governors. Of course, I have spoken to them on subjects of that kind. Otherwise, my job is Capitol Hill, to find out what's going on, why, and to whom—and when it is going to happen to us.

Chairman HART. When you say your contacts are with Capitol Hill, can you give us some examples of issues or problems that you have worked on in the last year recently?

Mrs. BEARD. Oh, every day changes so much. There is so many things. Well, let's see, was last year the water quality bill? That was one. That was the year before. Time means nothing. I am just sitting here getting older and older and keep on working. I think last year we were having some problems with pollution for our Rayonier plant, your know, whereas the States and our technicians would agree on what was proper for the water and the safety and purification of the water and the Federal Government would step in and decide that wasn't the answer at all. Gee, there are so darn many. I wish I had thought to bring a lobbying report. Really, I can't begin to remember, sir, because there are so many things that come up so suddenly. Often I find them out myself. I don't even tell anybody in the outfit. This just doesn't look good for ITT, and I go try to find out what it is all about.

Chairman HART. Well, I think you are talking to a panel that understands the daily calendar is a full one and unpredictable one.

Mrs. BEARD. Totally.

Chairman HART. Let me ask, though, in addition to contacts with Capitol Hill, do your duties cover contacts with officials in the Executive branch of the Government?

Mrs. BEARD. You mean Cabinet members?

Chairman HART. Among other things, yes; but with White House personnel?

Mrs. BEARD. Only those that I have known for years. I don't see them much. Normally, no.

Chairman HART. On occasions, yes?

Mrs. BEARD. Well, let me see. I have known Mel Laird since he was a baby, it seems like. I mean I have never seen him on official business. I have never gone to a Cabinet member or the high executive. That just isn't my bailiwick.

Chairman HART. One of the reasons that brings us here, though, was a contact made with a member of the Executive branch, and more particularly a Cabinet member, Mr. Mitchell.

Mrs. BEARD. Yes.

Chairman HART. Were there no other Cabinet members with whom you on occasions have discussed problems of ITT?

Mrs. BEARD. I am trying to be perfectly honest, and I cannot think of a one. I have met them all now at parties, certainly. You know Washington. You can't help it, but I—no, absolutely.

Chairman HART. How about personnel in the headquarters of the Executive branch, the White House, any contacts for ITT at that point?

Mrs. BEARD. At that point, sir, I wasn't near the White House as far as this antitrust thing was concerned. I did not understand it. I am not a lobby—I am not a lawyer. I can't add two and two. I was never involved in that in any way. Our office situation is set up such that the congressional group is entirely in the opposite end of the hall, where the lawyers, and—you know, the wheels were working out the negotiations, so I—really, most of the information I had about it was what I was reading in the papers.

Chairman HART. We are hopeful that we can establish in this first visit the basic outline. We will not pursue this. Except as to the convention and the antitrust thing, when did you first get the idea that ITT could play a role in bringing the Republican Convention to San Diego?

Mrs. BEARD. Well, we are sitting out there with three big properties, with an awful lot of money in them, and in a town that wanted to be a convention town, only doesn't want any people there. This seems typical of San Diego. We needed advertising, some months ago, but this to me was the most intelligent move in the world to make, to try to get the convention into San Diego and to use our facilities. You know, this is advertising, Senator, that you can't—I don't know how you go about buying it.

Chairman HART. Well, was it your idea initially, or was it suggested to you by somebody else?

Mrs. BEARD. It was suggested to me by someone else in absolute confidence and as a mere possibility, and the only reason I was spoken to at all is because I was spending an awful lot of time in San Diego at that time. We were late in the hotel. We were having trouble with the Port Commissioners over some land we needed for a marina. We were putting in a cable plant down in National City, which also entailed—it was all on Port Commission property, and the dotted i's crossed t's and such was, you know, just a lot of involved stuff, and when it was mentioned to me, you know, there is a possibility of bringing this type of convention, now, the type of convention, you know, like 1968 or like yours would be wouldn't begin to fit in San Diego but we thought there was a chance that this would if our new hotel was built. This was the whole swinging point, the whole major point.

Chairman HART. Well, who was it that made the suggestion to you?

Mrs. BEARD. Some people in California, Ed Reinecke and his aide, and not—I have known them. They are very, very close friends. Heck, I have known Ed Reinecke since he was in candidate's school, and I don't know whether it was his idea or whether—I really didn't ask any questions. He said, "This is in utter confidence. We don't know whether there is a chance in the world. You know San Diego. Can you look it over and find out if your own hotel will be built in time, because rooms are going to be difficult?" So I did. My own

company didn't even know what the heck I was doing. I was out in San Diego counting rooms, meeting with Ma and Pa operations, and we had at the time at the Sheraton one of the finest managers I had ever known at any hotel, Gary Seland, who happened to be the assistant manager of the Blackstone in Chicago in 1960, and a tremendous help, having been through a convention, and the dangers thereof and so forth, and he and I just quietly went around counting rooms and realized that, you know, transportation, everything, and realized that extra 700 rooms that we were going to have in our hotel would make the difference.

Chairman HART. Well, about when was the suggestion made to you by Mr. Reinecke?

Mrs. BEARD. Either January or February of last year, sir.

Chairman HART. And was the aide whom you have not named Mr. Gillenwater?

Mrs. BEARD. Yes, I'm sorry.

Chairman HART. And where, if you recall, was the suggestion made to you?

Mrs. BEARD. We had lunch at the Carlton Hotel, sir.

Chairman HART. In Washington?

Mrs. BEARD. In Washington.

Chairman HART. Now, that is a function and an activity that one would not associate with the responsibilities and job assignments of a registered lobbyist.

Mrs. BEARD. Well——

Chairman HART. I make that comment not to be critical, but to suggest are there other areas where you have been active on behalf of ITT which would not normally be associated with lobbying?

Mrs. BEARD. Yes, sir, there have been times—I think in that memo ITT put out—the one of June 25 or something—my job has more or less turned into a troubleshooter, always eventually coming back to what I can and cannot get done on Capitol Hill, but I know this comes to mind right quickly, at one point they wanted—oh, they were going to build a utopia down in Florida someplace, and I—from the maps, it doesn't look too smart to me, so I went down and looked at it, and I said I just don't really believe they are going to let you close up the entire Key Biscayne and destroy all the water fowl and everything else and let you use it for a golf course, which they subsequently didn't do.

Chairman HART. Well, when following the conversation with Mr. Gillenwater and Mr.——

Mrs. BEARD. Reinecke.

Chairman HART. Reinecke, with whom else did you have contact in connection with the possibility of the convention going to California?

Mrs. BEARD. Absolutely——

Chairman HART. Before that annual meeting of ITT?

Mrs. BEARD. Absolutely no one, sir. A confidence is a confidence to me. We didn't have a prayer. We didn't have a hope because of the physical layout of the city of San Diego, and nobody, absolutely no one that I discussed that with, anyone. It wasn't my confidence. It was somebody, "Keep your mouth shut," and I did.

Chairman HART. We will return to it, but again, to get a broader understanding of your function and responsibility in the Washington

office, did you prepare any speeches, drafts of speeches, for members of the Congress on antitrust policy?

Mrs. BEARD. No, sir.

Chairman HART. Did you transmit to any Member of Congress such speeches?

Mrs. BEARD. No, sir, I certainly talked to an awful lot of them, as I suppose every one of you had many people coming to you, "What are the rules?" I believe every one of you know the business of screaming for some antitrust laws other than the Clayton Act, that we could find out what we are allowed to do and what we are not allowed to do, and I saw many people, but I am not a speech writer, sir.

Chairman HART. Well, I wasn't asking you whether you had written speeches, but whether speeches had been provided you to give to Members of the Congress either on change of antitrust policy or the establishment of a commission to study antitrust laws and possible changes?

Mrs. BEARD. No, sir, not that I am aware of.

Chairman HART. Are you aware of anyone in your Washington office or for your Washington office who was doing this?

Mrs. BEARD. I really can't answer that, because I don't know. I work peculiarly alone, Senator, and though we have meetings twice a week, it is—I couldn't begin to tell you what Bob Schmidt and his boys were doing. I was at one time director of congressional relations. I could have answered anything like this now then, but I am no longer in that position. Consequently, I do not see those kids an awful lot and only if they are in some sort of trouble or if something comes up they think I can help them with do I even know what they are doing, so I can't begin to answer for them.

Chairman HART. Mechanically, in the office, how are memorandums, letters and statements of yours prepared? Do you type them? Are they typed for you? Do you dictate them?

Mrs. BEARD. I dictated entirely until I got a little secretary that couldn't quite keep up with me, so I have a charming vintage 1908 typewriter that I beat things out on myself. I put them in the out box and the secretary types them, but that's only been the last year or two.

Chairman HART. Prior to that last year or two, you didn't have a secretary?

Mrs. BEARD. I had one, but I had an excellent one. I mean I dictated entirely. She was very fast. She was very good, and I often dictated full memos to her on the telephone, and when I got back to the office even the next day they were perfect.

Chairman HART. About when in point of time did you lose that secretary and that skill and then have to return to picking out memos?

Mrs. BEARD. Do you happen to know when Josie left? It was over a year ago, well over a year ago. She was the last good one I had. You know, it is not easy to get a woman that wants to work for a woman.

Chairman HART. No comment. Do you recall who your secretary was in April of 1971?

Mrs. BEARD. I believe it was still Josie.

Chairman HART. Josie being the one that was very skilled?

Mrs. BEARD. Yes. I almost had her name. Vesuvius—no, Josie—very strange name.

Chairman HART. I can't help.

Mrs. BEARD. It was early in that year that she married and then she left me not too long after they had been married, and then I had a series of Kelly Girls, such.

Chairman HART. Beginning sometime around April, is it your impression that you lost a woman of great skill and from about that period you had a miscellaneous assortment of secretaries?

Mrs. BEARD. Yes, sir. However, during that—1971—I looked through my old expense accounts and old calendars and such and I was out of town a great deal, a great deal.

Chairman HART. When did you look through your calendars and expense accounts?

Mrs. BEARD. When I was trying to figure out why in the world if I had written that memo, which I knew I couldn't have written it—it just isn't the way I dictate—or where I was looking through them to see what possible—you know, there had to be something that could bring back memory, some recall of what the blooming hell that thing was all about, and it was nothing. I looked through my chron file. I looked through the subject files where things should normally be. I had finally gotten my expense accounts to see where I was, and my calendars, my desk calendars, to see where I was.

Chairman HART. When did you do this before leaving?

Mrs. BEARD. Just before I went to New York, sir.

Chairman HART. Just before you went?

Mrs. BEARD. Yes, sir, so, say, it was—well, Friday I was having a bad time. Saturday afternoon, I talked to him and he said he was going to call me again the next day. I think it was Saturday night my daughter and I went through them and tried—because I still maintained it wasn't mine. It is not connected.

Chairman HART. Well, again we will leave the ground work, yet I can't refrain from saying it—I think it is on the mind of all of us—if even before you left Washington you had concluded that the so-called Anderson memorandum had not been prepared by you, why in heaven's name didn't you tell the world at that time?

Mrs. BEARD. Sir, I had absolutely no one to turn to. I—the people in the Washington office was obviously delighted. I don't know what happened. I couldn't make them listen. I just—I just didn't know what to do. I didn't know where to go, what to do, to try to get somebody help me prove this, and then, of course, shortly thereafter, when it came out Mr. Hume and Mr. Anderson had eight or 10 or 12 or whatever the number is more private and confidential memos from our office, I didn't trust anyone. In reading this thing, it looked like someone was putting fast periods in my existence and I didn't know who to trust. I didn't know who to go to.

Chairman HART. Well, in a period of a couple of days, you went to the New York office?

Mrs. BEARD. Yes.

Chairman HART. Did you tell them or any of them what you are now telling us?

Mrs. BEARD. I tried to. I tried to, and they said, "Well, you know, this isn't it, but what we have to do is figure out what you meant by this," and we would get down to these crazy sentences, and I said, "They don't even hang together. They don't mean anything. I don't even know what they are supposed to be indicating." And I—

Chairman HART. Would that suggest that these people in ITT who knew you and to whom you were protesting that this was not your memorandum did not believe you?

Mrs. BEARD. It certainly seemed as though they didn't, sir. I have never been so hurt in my life, because I have worked hard for ITT. I feel that the company is my baby. My golly, we started the Washington office and I just—nobody said anything, but I just had the strange feeling it doesn't matter what I say, these people aren't going to help me and aren't going to believe me, particularly when there were no copies of what I had actually written anywhere, anywhere.

Chairman HART. Well, it is your testimony that you were convinced after checking your expense accounts, diaries and so on, that this was not your memorandum? You told your associates in the Washington offices and you went to New York and you told your associates in the New York offices.

Mrs. BEARD. I didn't say——

Chairman HART. You are protesting at all times that this was not yours?

Mrs. BEARD. No, not that strongly, because I worked so long with them all that I didn't think I was going to have to start beating on the desk. I simply said, as we went over it, "I would have no knowledge of this sentence." It didn't make any sense. In the first place, I would never call the man I think more of than anything in the world, Harold Geneen, whatever the word is in the back, blabbermouth or something. Time was when the company was younger we all teased one another, but I wouldn't put a thing like that about Harold Geneen in a memo to anybody.

Chairman HART. Well, in your prepared statement you do tell us that on page 9 that when you were in New York at the end of February on the 29th and March 1st, "I knew it was not my memo, but I had no way to prove it without assistance, which had to come from ITT, and which was not tendered at that time"?

Mrs. BEARD. Yes, sir.

Chairman HART. What assistance did you have in mind?

Mrs. BEARD. Well, we have a very large and I had thought much bigger security system, security setup, like I suppose all companies do, and they aren't novices at such things. I thought they could tell by type, typewriting, some way, that this thing was not legitimately—in the first place, I knew the "D" was not mine, but I wasn't absolutely convinced of it, because I hadn't really studied it, and until the night I came out of the intensive care and Mr. Anderson was on television with "60 Minutes," and they happened to show a closeup, if any of you all saw it, a very clear closeup of the top section of that paper, and I just nearly jumped out of bed. I called the children. I called everybody to look at that. That is not mine. What that "D" is, sir, I would swear and I am under oath, was traced from the beginning of my signature.

Chairman HART. Do the doctors who are under oath have material available to tell us the date on which Mrs. Beard came out of intensive care, that being the date on which the Anderson——

Mrs. BEARD. Well, it was Sunday.

Chairman HART. The TV show?

Mr. FLEMING. March 12.

Dr. RADETSKY. March 10 or 12.

Mrs. BEARD. March 12.

Dr. RADETSKY. March 12.

Chairman HART. March 12. Mrs. Beard, I am advised by our transcriber that it is necessary to take a break of about 10 seconds to put on a new tape. I will yield.

(Recess.)

Chairman HART. I should explain for the tape and the record that we are delaying the resumption of the proceeding. Doctors and now several nurses have come in. We are advised that the medical monitoring device is, we hope temporarily, not registering.

Senator BURDICK. It is all right now.

Chairman HART. Is the medical monitoring device now working?

Dr. RADETSKY. Right. It is fine.

Chairman HART. Senator Cook?

Senator COOK. Senator Kennedy.

Senator KENNEDY. Mrs. Beard, if we could just—Senator Hart was asking you some questions about your staff help and assistants, and you were attempting to recall who was your secretary in the spring of 1971. Could you perhaps just review to the best extent possible who your secretaries were during that period of time?

Mrs. BEARD. The last name was Klasinius. That's the last name of the girl I was trying to think of, Josie Klasinius, who was an excellent secretary. I'm not sure what month exactly she left. Have you all anything with any dates or initials?

Mr. FLEMING. No.

Senator KENNEDY. Do you remember when Susan Lichtman started working for you?

Mrs. BEARD. She started working for me at a time when I was in San Diego, and the time she was there with us—I would say I have seen her probably no more than seven or eight times, 7 or 8 days.

Senator KENNEDY. So, approximately when was that?

Mrs. BEARD. Well, she says here. I don't remember dates. Doesn't she say in here?

Senator KENNEDY. Was she—

Mrs. BEARD. Well, I'm trying to find it here, sir. During the period from May 24 of 1971 to July 14 of 1971.

Senator KENNEDY. She was your secretary then in June of 1971?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. June 25? Mrs. Beard, could you tell us whom you report to in the I.T. & T. office in Washington? Who is your immediate superior?

Mrs. BEARD. Well, Merriam, Bill Merriam. In some instances, over the years, it has been directly to Gerrity in New York, but essentially it is Merriam.

Senator KENNEDY. Could you tell us who else is on the same level as yourself in the Washington office?

Mrs. BEARD. No, I can't; because the table of organization is the funniest looking thing I have ever seen. I would have to draw you a picture of it, and I don't know what it means either. Merriam, head of the office, his deputy, and then—

Senator KENNEDY. Who was his deputy?

Mrs. BEARD. John Ryan; and then there is a line here with the newspaper people, the lawyers, the State Department relations, government relations, blah, blah, and then another line, and congressional

grouping, and import group, and Beard is sitting way up near the top of the page in a little box by herself. I asked at the time what this means, and that's just the way it is, just up above Merriam in a little box, assistant to the director of Washington relations.

Senator KENNEDY. Who does Merriam report to?

Mrs. BEARD. Ned Gerrity; E. J. Gerrity, in New York.

Senator KENNEDY. And sometimes you report to Mr. Gerrity?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. Could you tell us about Mr. Ryan? Is that John Ryan?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. And did you report to him at all?

Mrs. BEARD. Yes, sir; when Merriam was ill or out of the office a great deal, John became a focal point of everything in the office.

Senator KENNEDY. How would you describe his responsibilities in the office?

Mrs. BEARD. Well, he took a great—when Merriam was there, John, a great deal of pressure off him with certain things. I think John's area—and I am—I don't spend a lot of time in my office, so I cannot be absolutely accurate about all this, but from discussions at our staff meetings I understand that John's primary responsibility is to the various agencies, FCC, SEC, you know, and when Bill Merriam is not there, of course, he runs the entire offices and approves expense accounts and expenditures and—

Senator KENNEDY. Does the Washington office of I.T. & T. own a document shredder?

Mrs. BEARD. Yes, they do.

Senator KENNEDY. Do you know how long it had one?

Mrs. BEARD. No, sir, I imagine it's been there a long time. I don't know.

Senator KENNEDY. Was it used frequently while you were in the service of the company?

Mrs. BEARD. I don't know that, Senator, because it has been my practice for all my years a confidence was a confidence.

Anything that has ever come to me personally or confidential from Ned Gerrity or from anybody has been torn up and put in the wastebasket as of then, so I have no idea. Of course, the import-export division, you know, just has tons of telegrams and stuff come in from all over the world, and so I assume they have had that shredder for a long time just as a—rather than fill up wastebaskets, just to get rid of stuff.

Senator KENNEDY. Do you usually write a memo concerning your contacts with Members of Congress and put it in the files?

Mrs. BEARD. Very seldom. It is another thing that was so wrong about this. I think I have been cursed out more than any human being on earth because I don't communicate. I don't put anything in writing and I—if it's important enough, you shouldn't, and if it is not important enough, why bother?

Senator KENNEDY. Did you ever use the shredder yourself?

Mrs. BEARD. No, sir.

Senator KENNEDY. Was it used in your presence at all?

Mrs. BEARD. Never in my presence; no, sir.

Senator KENNEDY. Well, there has been some testimony that it was used in your presence—what's the date—when the security men returned to Washington and that you were present.

Mrs. BEARD. Well, the shredder itself was in the Xerox room. It wasn't—I mean I don't think you push them around on wheels, but there was things going through my files, which I objected to at first, until I began to read through and realize the depths of the filth in some people's minds. Things I threw away were in most cases personal letters that could have meant anything, could put any interpretation on them, from very highly placed politicians, governors, and it would have been nothing but a wide open—if somebody wanted—it was beginning to look like it was, "noon time, let's go down and play in the ITT files for a while," and if Anderson really has all he claims he has, and it would have been just some of those things would have been a character assassination of a perfectly innocent person, and then I joined in. I did. I was upset very definitely at first until I realized, because I definitely had the feeling, the little while I talked to Hume that first day, this boy knows or thinks he knows something and he is holding it back, and I didn't know when the boom was going to fall or why on me, and I was really willing by that time to get rid of anything that had anybody's name on it. I have been in this business a long time and I have some wonderful letters from very, very dear friends, from politicians who turned out to be dear, dear friends, that could have been mis-interpreted by some—by those who wanted to cause trouble, and though I wanted to keep them for the signatures themselves, I realized that the history my child wants to write about me isn't nearly as important as not having ITT completely destroyed by misinterpretation of a small piece of paper, which they had already tried to do.

Senator KENNEDY. If the memorandum that Mr. Hume had wasn't yours, why were you worried that other documents should be destroyed? Why did you believe other documents should be destroyed, if you didn't think that—as you mentioned to us, that that memorandum was not yours?

Mrs. BEARD. Because it indicated that he had many, many, many things from there, and I was scared to death. I didn't know who to trust here. People I had lived with, worked with for 11 years, and you see, anything like this—I mean, I know who I gave the memo to and the procedure, but how did it get out of there? Who was cutting my throat? I was absolutely a total blank. I didn't know what to do, for the first time in my life.

Senator KENNEDY. May I ask, Mrs. Beard, in your testimony you in the third paragraph said, "I did not write, compose or dictate the entirety of the memorandum." Was there any part of that memorandum that you did compose or dictate?

Mr. FLEMING. Page 2.

Mrs. BEARD. The first paragraph, sir, it starts out with, I did talk to EJG. Do you have it before you there?

Senator KENNEDY. Maybe if you could at times tell us what parts of that memorandum you remember were either dictated or—

Mrs. BEARD. Oh, here I have it. The first paragraph, and we went over this line by line and I was desperately trying to prove out the truth then, as I still am. I know now the truth, but I don't know how or why somebody has done this. "I just had a long talk with EJG."

At that point, Hume said, "Well, that, of course, is Mr. Gerrity," and I said, "Yes, it is." And then, "I'm so sorry that we got that call from the White House," that I remembered.

Senator KENNEDY. What call was that?

Mrs. BEARD. Well, it wasn't to me. Mr. Merriam had called—I'm telling you the part of the memo that I at some time wrote, not in this time limit and not on the 25th of June, because I wasn't there.

Senator KENNEDY. Right.

Mrs. BEARD. So, of course, when I saw that I thought, well, it is something the guy has got a hold of, something about the White House. I remember that Mr. Merriam asked me one day, that he had gotten a call from somebody at the White House, wanting to know—on this commitment, underwriting commitment, which is all in the world it was, there in San Diego, and I never did know the exact amount because I didn't stay that long, had suddenly jumped. "Is this \$600,000 going to Nixon's campaign," and Merriam had been aware as much as anything I had been doing, and so he asked me to explain it and he said, "I don't understand," and I said, "Well, it is all completely false, whatever you are hearing or from whatever you are hearing." He said, "Write it down," so at that point I wrote part of this paragraph explaining to him and that—until we get down to this—

Senator KENNEDY. Do I understand, Mrs. Beard, that Mr. Merriam evidently received a call from someone in the White House?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. And you don't know who that was from? Do you know who that was from?

Mrs. BEARD. I am not sure, sir. I don't think he told me.

Senator KENNEDY. But, in any event, in response to that call that Mr. Merriam mentioned to you, he asked you to prepare a memorandum?

Mrs. BEARD. Well, first he asked me to come to the office. "What's going on? What's all this all about?" All very excited. He can get pretty excited sometimes, and I tried to explain as much as I knew, because I had not heard any final figures there when I left San Diego, when I left the party in San Diego. I said, however, "This has nothing to do with it and whatever commitments Sheraton has made, this put across three hotels, three very expensive properties." He said, "I don't understand it. Go write it." And I did.

Senator KENNEDY. And this part you remember?

Mrs. BEARD. The first part fits in very well.

Senator KENNEDY. All right.

Mrs. BEARD. Now, when we get to this last question, this last sentence.

Senator KENNEDY. Well, perhaps could we just review those parts that you do remember, Mrs. Beard, just in this—

Mrs. BEARD. All right.

Senator KENNEDY. And to the extent that you can tell us a little bit about it.

Mrs. BEARD. Well, the whole first paragraph is not mine. The last sentence, I don't know where in the world that mother came from.

Senator KENNEDY. Will you tell us which parts of that you remember?

Mrs. BEARD. The first paragraph.

Senator KENNEDY. The first paragraph, yes.

Mrs. BEARD. Not word for word. It is familiar to me and it sounds like my wording. Everything except the last sentence in that seems to make sense to me, even though I don't recall whether it is word for word.

Senator KENNEDY. All right.

Mrs. BEARD. The second paragraph seems familiar to me, because I had—by this time, if you remember, the San Diego papers were just throwing out numbers, my Lord a mercy, all over the place, all kinds, California. The headlines were \$4 million one day. Next day it was going to buy California. Outrageous things. Anyway, the second paragraph, I said I was afraid the discussion about the 300 or 400 slash—because I didn't know what the final figure was that they agreed on, Sheraton agreed to underwrite it, so that's all right. Now, the third paragraph—

Senator KENNEDY. Were services discussed at that meeting, providing some—

Mrs. BEARD. They evidently were discussed on the telephone.

Senator KENNEDY. At the May meeting in California?

Mrs. BEARD. I don't think so. I don't know. I mentioned—there was a Luau they were having there and I kneeled down on the ground for a few minutes talking to Mr. Geneen, Bob Wilson, Bud James, and really very quickly said, "You know, there is a rare possibility we can bring the convention to San Diego," and with that I departed. I thought I had done enough damage suggesting it, and I left, so I don't know what the final discussion was. I do know Hal Geneen was turning to Bud James, the president of Sheraton, and said, "This sounds like a natural, Bud, with this new property. We should certainly do something with the Convention Bureau." It wouldn't have mattered if we were having a convention of veterinarians out there. Our commitment went to the Convention Bureau to help promote three very expensive projects and properties.

Senator KENNEDY. Could you tell us just—I know we are running out of time.

Mrs. BEARD. Well, don't worry about time, as long as this thing keeps beating.

Senator KENNEDY. Well, maybe if we could, Mr. Chairman, just ask her about familiarity with this.

Chairman HART. I looked now at Dr. Radetsky, and I think we have about 4 minutes remaining.

Dr. RADETSKY. Yes.

Senator KENNEDY. Can you tell us what you remember about that third paragraph then in addition, Mrs. Beard?

Mrs. BEARD. "Now I understand from Ned that both he and you are upset about the decision to make it 400 in services." This obviously, Senator, was still in negotiations.

Senator KENNEDY. Right.

Mrs. BEARD. Mr. Merriam unfortunately doesn't know a great deal even yet about politics. I don't think he is familiar with a convention or Governors' conferences or any such thing. I knew it would be totally impossible to underwrite for any amount in services. You just can't give away three hotels. You know how they would look when you get through with them, holes in them, no doors, so this says

this, "he and you are upset about the decision to make it four hundred in services." I was trying to make it very clear it should not be in services. "Believe me, this is not what Hal said." Now, from here on, "Just after I talked with Ned, Wilson called me, to report on his meeting with Hal." I asked Bob Wilson about that and neither he nor I can remember what in the heck that's all about. Now, "Hal at no time told Wilson that our donation would be in services only," but that I had heard previously, as I am telling Bill up above here. In fact, quite the contrary. "There would be very little cash involved," and there was very little cash involved, I understand, which has been so far not even accepted. From there on—

Senator KENNEDY. Up to there, certainly, you are familiar with that general subject matter?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. And construction?

Mrs. BEARD. But, from there on, Senator Kennedy, if I—I am so completely confounded and confused. I was—this heart problem, by the way, I want to make very clear, has not been from just this.

Senator KENNEDY. Right.

Mrs. BEARD. It sort of goes in a series, and I have had quite a few sad things happen within the family in the last 2 or 3 months, so I wasn't in very good shape to start with, and actually Mr. Geneen suggested I take a vacation for the second time in 11 years and I was planning to go away when this thing hit. Anyway, very truthfully, "I am convinced, because of several conversations with Louie re Mitchell—" What in the world would they be discussing anything? "Our noble commitment," which is pure baloney. What's noble about making some money out of three mothers of property you haven't got a prayer of getting your money out of? I believe you remember in the paper—at least I saw—that Bud James had put out a statement that he normally spends between \$250,000 and \$300,000 to open one hotel, so far three properties—I mean this was a strictly business proposition to me, nothing noble about it.

Chairman HART. The doctor signals it is correct the hour and a half has elapsed. We will recess, to resume at 3 p.m. Thank you very much.

Mrs. BEARD. Thank you. I really want this straightened out, because somebody is—

(Whereupon, at 11 a.m., the proceedings were recessed, to reconvene at 3 p.m., this same day. Sunday, March 26, 1972.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

For the record and with Dr. Radetsky here, may I say that when we arrived Dr. Radetsky suggested to the committee that for the best interest of the patient and the orderly procedures here at the hospital it would be helpful if we could plan in our subsequent afternoon sessions to resume at 2 o'clock, rather than 3.

Dr. Radetsky, have I summarized correctly?

Dr. RADETSKY. Thank you, sir.

Chairman HART. And there certainly is no objection. We would be delighted to accommodate.

Mr. WHITE. We can be here also.

Chairman HART. Senator Cook.

Senator COOK. Thank you, Mr. Chairman. Mrs. Beard, this morning you indicated that the suggestion relative to San Diego was brought up by Ed Reinecke to you and it was in the nature of a confidence and he indicated to you that it was as such and that apparently you should keep it to yourself while you are working on it, is that what you—

Mrs. BEARD. Yes, sir.

Senator COOK. Well, at that time and throughout your discussions with Mr. Reinecke and up to the time of the memo, to the best of your recollection, how many people do you know of your own knowledge that were aware of the work that you were doing in regard to San Diego and the work that you were doing with regard to I.T. & T.'s contribution to San Diego?

Mrs. BEARD. As far as I know and through me, no one.

Senator COOK. Other than whom, now?

Mrs. BEARD. Reinecke and Ed Gillenwater.

Senator COOK. And no one else?

Mrs. BEARD. Absolutely. I was out of California a lot anyway and I never mentioned to anybody—the hotel didn't look like it was going to get built in time to go through the Pearly Gates. Up to that point, there was no reason to mention it and I was told not to and I did not. At the time when Reinecke first mentioned it, as I said, I was into it only because of the hotel and the fact that we were old friends.

Senator COOK. Was there a serious suggestion or was there a serious problem that the hotel might not be completed?

Mrs. BEARD. Yes, sir; they had some tieups. Foundations, they started to put them in, they found out were beat up old cars they used for fill and the posts just wouldn't stay. They couldn't find a foundation that would hold, so they had to do a lot of other ground work. We were very far behind on the schedule of building that because we couldn't find foundations.

Senator COOK. Well, now, earlier this morning you testified in regard to the first Anderson memo that you might have written a memo using some parts of that first paragraph, and you said "at some time." You then indicated that it is conceivable that you were not in Washington on June 25 of 1971.

Mrs. BEARD. I was not in the Washington office on June 25 of 1971. I was in for a very few minutes, signed mail and evidently dictated that other memo that I.T. & T. has put out—how else could I explain it? No, the one—it is the job description I think they applied to it the term, but I left the office at 11 o'clock and went out to lunch with a very, very good friend, and this was Friday and everybody else was playing golf. I never went back to the office at all.

Senator COOK. You said everybody was playing golf? Was that the Lombardi Memorial Tournament?

Mrs. BEARD. Yes, sir.

Senator COOK. Were people in the I.T. & T. office involved in that invitation for some reason or other?

Mrs. BEARD. Oh, very much so. I think—I really don't know. I believe young Bob Schmidt put the whole thing together and did a remarkable job, but all of the executives were there and I think a good many of the secretaries were out there keeping track of tallies or whatever you do at golf matches.

Senator COOK. Now, Mrs. Beard, Brit Hume testified that you acknowledge that the memorandum he confronted you with was authentic. Now, did you say that to him? Did you acknowledge it as your own at that time, or do you recall what you did say to him at that time?

Mrs. BEARD. At the very first meeting with him, as we said earlier today, I read the first paragraph. Then it was certainly very familiar news. I never from then on said, "Yes, this is mine," because I would have no way to have been—even in wild dreams, have dreamt up some of the sentences that are in this thing.

Senator COOK. Now, Mr. Hume testified that you recognized your own little "D" on the memo. Now, you usually sign memorandums that way?

Mrs. BEARD. I sign with either "DDB," usually "DDB," all written together, or to friends whom I type—close friends, I have just a plain "D," but it doesn't go down like it is going into a signature. If I wrote my signature, you would see that, in making the "D," it comes all the way down to go into the "i," you know, but just the initial "D" I never—it stops up at the top somewhere.

Senator COOK. Well, if you had given a memo to your secretary that morning and you left the office at 11, did you have occasion to even see either a memorandum purporting to be that or the one, the second memorandum we now have, or did you have the opportunity to look over any work that your secretary had done on that Friday, or had you already left the office?

Mrs. BEARD. The only memo that was typed that morning is the one that ITT came up with, which is this one, and which I had left with her. She did excellent work, and that's the only one that was dictated by me that day.

Senator COOK. And that one was not initialed, is that correct?

Mrs. BEARD. No, sir.

Senator COOK. When you sign things, do you sign with a pen? Do you sign with a ballpoint pen?

Mrs. BEARD. Usually—

Senator COOK. Pencil?

Mrs. BEARD. An interoffice memo I use just a pencil, if there is a pencil on the desk, or, you know, a pen that sits in a hole, but it is usually just a little "D" or "DDB."

Senator COOK. Do you type?

Mrs. BEARD. I did when I was younger, sir, but I couldn't call it typing any more. Certainly not these fancy machines now.

Senator COOK. Have you talked to your secretary, who was your secretary then? Have you talked to her since the occasion of the controversy?

Mrs. BEARD. No, sir, I haven't. I wasn't even sure where she was. Though she had been, I think I mentioned this morning—she had been with us, what, 2, 3, 4, 5, 6 weeks, I had actually been in the office a very short time. I didn't know her very well at all.

Senator COOK. Now, in a sworn statement that you released last week you stated that the memorandum that Mr. Anderson has put in evidence before the Senate Judiciary Committee is not yours, it is a forgery and a hoax. Now, you repeated that this morning. Do you contend again that this was not your memorandum, that you did not prepare it, that you do not know its source?

Mrs. BEARD. In its entirety, I did not prepare it. I did not dictate those sections that were started to be discussed this morning.

Senator COOK. Well, about the time indicated on the Anderson memorandum, June 25, do you recall preparing any memorandum or memorandums to Mr. Merriam regarding the Republican Convention in San Diego in 1972?

Mrs. BEARD. No, I do not, sir, because in the first place I had already written this one which related to where I had been spending so much time and why I was out of town a lot and, well, you have read it, and there would be no conceivable reason for me to be writing him two memos on the same subject the same day, besides which he wasn't there. Nobody was there.

Senator COOK. Well, what prompted you to write this memorandum that you call your memorandum?

Mrs. BEARD. My—what I recognize of the so-called Anderson memorandum?

Senator COOK. Right.

Mrs. BEARD. Mr. Merriam called me one day. I thought I had explained this this morning. And asked me to come to his office. He said he had gotten a call from the White House. "What in the world is all this? What is the commitment? What happened out in San Diego?" And at that time the San Diego papers were—I did say it this morning—were everything from \$400,000 in cash or, no, it was going to be \$400,000 in services, no, it was only \$100,000. I have a complete file on some of the absurd things that were coming out of the newspapers in San Diego at that time. We in the Washington office did not know what Sheraton and the convention bureau's actual negotiations were, so this paragraph I was trying to explain to Bill Merriam that, since none of us in the Washington office know what the actual negotiations are and it was still in being, what was the point of our even discussing it with anybody, because we didn't know. I didn't know.

Senator COOK. Well, when did you first realize that the Anderson memo was not the same as the one you had prepared?

Mrs. BEARD. Well, the day in the office when I read the whole thing. I simply couldn't believe what I was reading, and then I thought, well, would I be mean enough to put something silly in like that just to tease Bill Merriam? I said, no, it is personal, confidential. I really tried every way in the world to figure out what in the world it was, and then when I got to the second page and called Hal "big mouth" or whatever it was, I realized this is not mine. I wouldn't say anything like that. The sentences from about the middle of the first page on are simply something that I never heard.

Senator COOK. Well, Mr. Hume also testified that during the meeting at your home on the 24th, you told him that you had negotiated the terms of the settlement of the ITT cases with Attorney General Mitchell during a party at Governor Nunn's residence on May 1. Now, did you ever say that to Mr. Hume?

Mrs. BEARD. If I did, it must have been toward the end of the evening, sir, when I was so upset. I was trying so hard to make this man realize that it was absolutely no connection. It wasn't a grilling. This was a persecution. This man kept asking questions and putting the answers in my mouth. He, for example, kept on, "Geneen told you to do this? You were working under orders from Geneen?" I do

not see Harold Geneen once a year, Senator, and he kept maintaining that he was going to tie the two together and I kept stating, "You are not going to tie the two together, because they are not related." I was never assigned to work on anything in antitrust. I have no background to work on such a thing as that and certainly I don't work at that level.

Senator Cook. Well, now, did you ever discuss with Mr. Mitchell the evening of May 1 or at any time any terms that ITT would desire in the settlement of the merger cases?

Mrs. BEARD. Not in terms, no, sir. I, much to my regret and distress, made a nuisance of myself there and some day I deeply want to apologize to Governor and Mrs. Nunn and Mr. Mitchell. It is not my habit to be a nuisance at a thing like that. I asked him. I said, in a pleasant sort of way, "I think you are being awfully unfair to ITT. What's the deal? What's the problem?" And, of course, he said, "You know perfectly well I'm not going to discuss it. I have disqualified myself from this." And then another time I said something about, "Well, what about Hartford?" And he said, "I have told you I can't discuss it and I am not going to discuss it." And here is a small informal gathering, most disgraceful thing I have ever done in my life, but another time or two I said something to him, and he finally got mad and very rightly. He said plenty, which I deserved.

Senator Cook. Well, now, the Anderson memo also makes reference to an alleged connection between ITT's participation in guaranteeing to San Diego for the convention and the settlement of ITT's merger cases. To the best of your knowledge, was there any connection between the two matters?

Mrs. BEARD. No, sir; between the—I want to be sure I got your question right. Between the San Diego and the Justice Department?

Senator Cook. That's correct.

Mrs. BEARD. There was not. There absolutely was not. As I said, in the first place, until the 12th of May, no one in ITT even knew that I was working on this, and only at that time did they know because Ed Gillenwater had come to the cocktail party during our stopover and I said, "Ed, the time has come. I have looked around. There is space here for this type of convention," as I told the Senator this morning. "If we get our hotel built, and I am assured by our contractor, I walked over it foot by foot, the orders are in, it will be ready, but I have got to tell my people now so they will know they are building a hotel—" and Gillenwater said, "Yes, it is time for the rest of the people in ITT to know," so the following night I mentioned—

Senator Cook. The following night, that's the 14th? The board meeting was on the 12th?

Mrs. BEARD. The board meeting was on the 12th.

Senator Cook. Is that correct?

Mrs. BEARD. Around the 10th, 11th, and 12th. I think he was going to leave right after the board meeting, but anyway, they decided right at the last minute for me to have a luau for the members of the board and the directors at the Harbor Inn, which is a beautiful hotel, and we put a party together very, very fast. I thought it was the 12th, because it seemed to me they were all going to San Francisco the 13th. The thing itself, the stockholders meeting itself, ran the

10th, 11th, and 12th. I did not look it up on my calendars exactly. I know it was the last day they were there. In fact, immediately after the party most of them went on to Los Angeles to a luncheon, a big luncheon the next day, and that was the first time I mentioned in any way to anyone there was the least possibility of taking the convention in California into San Diego, and that was with the proviso we got our hotel built. Mr. Geneen turned to Bud James and said, "This seems like excellent, unbuyable type publicity with three very expensive properties," and with that I got up and started talking to other people at the party, so actual figures I don't know. All I got for figures from then on was what was coming out of the San Diego papers, and, believe me, they were jumping from—just all over the place, and I was getting questions all over Washington, from the national committee, the various people, "Well, is this money going to National Committee or just going to Nixon's campaign?" And all I would say is, "I don't even know the amount. I don't know what the final negotiation is with Sheraton, but it is going to the convention bureau to promote the city of San Diego."

Senator COOK. And all this occurred some 11 days after your confrontation with the Attorney General in Kentucky?

Mrs. BEARD. Yes, sir.

Senator COOK. Did you ever tell Brit Hume that there was any connection between these matters, between the ITT cases and the San Diego convention?

Mrs. BEARD. No, I told them definitely there wasn't any because the third time he called me at home I was—I had a pretty bad attack the night before and the doctor had given me some pretty heavy sedation and the boy called me the third time and I told him I could hardly talk. I was still sedated and I was not going to talk to him, and he said, "Well, what about those dates?" I said, "Those I do have, and I met Mr. Mitchell the first of May and ITT knew about the possibility of the convention on the 12th of May," and until that time no one—I had discussed with absolutely no one in Washington, D.C., including Bob Wilson, whose district it is, no one.

Senator COOK. Thank you, Mrs. Beard.

Chairman HART. Senator Kennedy.

Senator KENNEDY. Mrs. Beard, we were reviewing the memorandum this morning. I don't know whether you have a copy of it handy. Mrs. Susan Lichtman in her statement and affidavit on the third paragraph points out, "As previously stated in the above-referred-to statement, I did work on June 25, 1971. I might have typed such a memorandum on that date, although I am not sure. To the best of my knowledge, I do recall typing a memorandum dealing with the San Diego convention containing sentences through the sentence 'but certainly some.' " I think that "certainly some" ends on the fourth line from the bottom, on the first page here.

Mrs. BEARD. Oh, all right. You mean this morning, sir?

Senator KENNEDY. Yes.

Mrs. BEARD. We had gotten as far as "certainly some," right.

Senator KENNEDY. I was trying to just refresh perhaps your own recollection as to when this memorandum and the Anderson memorandum, conditioned by what you said this morning in your presentation, might have been written. Could you help us at all in that?

Mrs. BEARD. When it could have been written?

Senator KENNEDY. Yes.

Mrs. BEARD. This first paragraph—I have to keep going back to the first paragraph, because this is obviously an endeavor to explain to Mr. Merriam that we didn't know what the negotiations were in Washington, obviously we shouldn't discuss it.

Senator KENNEDY. Do you remember what the date was that you had your conversation with Mr. Merriam?

Mrs. BEARD. No, I don't. It was either——

Senator KENNEDY. Was it around the golf tournament?

Mrs. BEARD. It seems to me everybody in that place was working on that golf tournament. I have a feeling it may have been a little after the first—I mean around the first of July.

Senator KENNEDY. Sometime late June or July?

Mrs. BEARD. I have a feeling more nearly early July because that whole office was upside down in that golf tournament for weeks.

Senator KENNEDY. All right; Susan Lichtman had indicated, as I mentioned to you, she said, "I might have typed such a memorandum on that date," referring to June 25, "although I am not sure. To the best of my knowledge, I do recall typing a memorandum dealing with the San Diego convention containing sentences through the sentence 'but certainly some.'" That includes most of the material that we have been over this morning. It also includes some material there which you have mentioned, I think, this morning that confused you a bit or that you did not remember; is that right? I don't want to be putting words in your mouth, but I am just trying to tie in——

Mrs. BEARD. No; I said this morning, "Now I understand from Ned that both he and you are upset about the decision to make it 400 in services," well, it was never to be services, so this whole paragraph gets hazy, Senator. It really does.

Senator KENNEDY. It gets hazy, but——

Mrs. BEARD. Because it doesn't say what it is supposed to be saying. You know, I dictate very clearly normally.

Senator KENNEDY. Well, what was it supposed to have said in terms of the services?

Mrs. BEARD. Well——

Senator KENNEDY. Certainly the services, as I understand it, were talked about out at the May meeting, or there was some reference to it. Could you tell us, going back to the May 12 meeting, what was talked about in terms of services?

Mrs. BEARD. You see, I didn't stay during the conversation. I sort of let this little bomb drop that maybe we could bring the convention here for our new hotel and then I left it up to the Sheraton people and Bob Wilson and two of Harold Geneen's aides were at the table, but I swear I can't remember who, and Geneen, but I left. I mean I did not stay around for what would be required or how much is needed. I looked on it kind of regardless of what they came in with it is more or less of a feed money type of a thing to get the interest of the citizens of San Diego, which you often have to do.

Senator KENNEDY. Did they talk about any funds at all while you were there, making a contribution to the tourist bureau while you were there?

Mrs. BEARD. Well, certainly Sheraton said, "We would have to work through the convention bureau and any cash contribution would have to go through the convention bureau."

Senator KENNEDY. Did they talk about any figures while you were there?

Mrs. BEARD. No, sir, they did not.

Senator KENNEDY. Did they talk about whether they could provide services or not while you were there?

Mrs. BEARD. No, I didn't stay through that. I heard about it later.

Senator KENNEDY. Whom did you hear about it later from?

Mrs. BEARD. Mostly the San Diego papers.

Senator KENNEDY. You mean about the figures itself?

Mrs. BEARD. The figures themselves and who it was going to be provided by and in what way.

Senator KENNEDY. Did you ever talk figures to any of the ITT people, to Mr. Merriam?

Mrs. BEARD. No, Merriam wasn't out there.

Senator KENNEDY. No, later, at any time.

Mrs. BEARD. No. I did with Gerrity.

Senator KENNEDY. With Mr. Gerrity?

Mrs. BEARD. Gerrity, several times.

Senator KENNEDY. Could you tell us what those conversations were?

Mrs. BEARD. Well, roughly, I said, "You certainly can't—this is an underwriting, in the first place," which to my mind means we are going to help raise the seed money necessary, but we cannot provide three hotels' worth of services. The bookkeeping alone would be outrageous.

Senator KENNEDY. So you did talk services to Mr. Gerrity, that you didn't feel they could provide services?

Mrs. BEARD. Oh, yes, sir, I felt it was very unbusinesslike.

Senator KENNEDY. But you felt they would need some seed money?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. In terms of promotion?

Mrs. BEARD. Yes, it says here, "some cash, but very little."

Senator KENNEDY. Do you remember your conversations with Mr. Gerrity, what figures were being talked about?

Mrs. BEARD. No, I don't. Frankly, I don't. They were going from—I thought it was 200,000 underwriting and then I—my son read me the paper the other day from Geneen's testimony that they were talking about \$200,000 in cash.

Senator KENNEDY. Certainly, if you were—

Mrs. BEARD. Which I was not aware of. I thought it was a hundred thousand in cash, and that's mighty minimal for three properties.

Senator KENNEDY. In the second job description ITT memorandum, it says on the bottom, "The negotiations for the 1972 convention being held on ITT properties in San Diego have been wholly my responsibility." Within that responsibility you can't tell us anything more about what ITT was prepared to contribute to the tourist bureau?

Mrs. BEARD. \$100,000 cash is all I ever heard.

Senator KENNEDY. And who did you hear that from?

Mrs. BEARD. From Bud James, through—well, through Ned Gerrity from Bud James, but—

Senator KENNEDY. Well, then—

Mrs. BEARD. My whole responsibility, really, technically meant seeing that blooming hotel got built.

Senator KENNEDY. Well, then what did the—in the part of the memorandum that Mrs. Lichtman indicated she had written and also which you show familiarity with, they mention the figures of \$200,000; \$300,000 to \$400,000 commitment. Do you remember that part of the start of the second paragraph?

Mrs. BEARD. Oh, this is what I said, "I was afraid the discussion about the \$300,000 or \$400,000 commitment would come up soon," because this was the figure I was getting around Washington now.

Senator KENNEDY. Whom were you getting that from?

Mrs. BEARD. Oh, from members of the national committee, lobbyists. You know rumors in Washington fly like—

Senator KENNEDY. The—

Mrs. BEARD. And I had not called Gerrity to find out what it was. I simply—it says here I had heard Hal upped the original amount but I did not know whether it had gone up that far or not.

Senator KENNEDY. But you had heard that it had gone up that far?

Mrs. BEARD. Yes.

Senator KENNEDY. And you had heard that from someone in the Republican National Committee?

Mrs. BEARD. I'm trying to think. In the first place, everybody was considering it cash. It wasn't ever cash. Underwrite—well, like your convention, somebody is underwriting it. Everybody underwrites a convention, particularly if you have a big piece of the city, and where the thing went wholly wrong is from the misquote in my estimation that came out of the San Diego paper that it is \$400,000 in cash. That's not only illegal, it is impossible bookkeeping. It makes—it's ridiculous. The most cash I ever heard was \$100,000 to the convention bureau, which as far as I know is still there.

Senator KENNEDY. Could you tell us whom you talked to in the Republican National Committee about these arrangements? Did you talk with anyone?

Mrs. BEARD. No one of any great importance, not Bob Dole or Lynn Nofziger or anybody.

Senator KENNEDY. Could you just tell us, though, whom you did talk to?

Mrs. BEARD. Well, members of the finance committee.

Senator KENNEDY. Who were they?

Mrs. BEARD. Trying to remember whether it was Bobbie O'Dell or whether it was Jerry Mulbank himself. I think everyone was trying to get clear in his mind, is this going to Nixon's campaign directly or going into the national committee or whose pocket was it going to wind up in.

Senator KENNEDY. Were they worried about how they were going to be able to get money from a corporation which would be able to be used at the convention? Were they trying to find out some way—

Mrs. BEARD. I assume—

Senator KENNEDY. Some way and some means by which they could get this contribution legally?

Mrs. BEARD. As I said, I had plenty of friendly inquiries, in which case I said nothing, because our agreement was that it would go to the visitors and convention bureau to promote three properties.

Senator KENNEDY. All right. Could I get back to the first paragraph, Mrs. Beard, the mention in the third line there, "Other than permitting John Mitchell, Ed Reinecke, Bob Haldeman and Nixon (besides

Wilson, of course) no one has known from whom that \$400,000 commitment had come."

Mrs. BEARD. Now, that is a misleading sentence, which I shouldn't have written the way it is, because I did not know from the first time I talked to Ed Reinecke—I did not know to whom he had spoken, when, how or if. He had simply told me that these are the people, the only people who would be aware of our attempt to take the thing to San Diego until after the site selection committee met in Denver.

Senator KENNEDY. When did he tell you that?

Mrs. BEARD. On the first meeting.

Senator KENNEDY. When was that?

Mrs. BEARD. January or February. I don't remember. He came in to Washington and said, "I need your help on something of the utmost confidence."

Senator KENNEDY. Did he say he was going to or that they had talked, that they were aware of these negotiations which you were involved in?

Mrs. BEARD. He told me only, "This is very confidential. Nobody is discussing it. We know we can have faith in you. Do not talk to anybody about it. At some point eventually these will be the people who will be involved with it." But he did not say clearly or distinctly that he had spoken to any one of these people. In fact, I rather imagine he had not, but when he tells me it is in complete confidence, I don't ask questions I don't need to know answers to.

Senator KENNEDY. Did you assume that he eventually did talk to them?

Mrs. BEARD. I am sure he must have at some point.

Senator KENNEDY. Did you ever have any contact with Mr. Haldeman?

Mrs. BEARD. No, sir; I haven't seen Bob since 1960.

Senator KENNEDY. At any time in your conversations with Mr. Reinecke, did he confirm that he had talked with them?

Mrs. BEARD. No, sir. Ed Reinecke came to town I think on two occasions after that first time and both of them was purely social and we had lunch. His wife was with him and nothing important was said. As far as I was concerned, once I saw that for myself that the arena, convention center, that there was enough hotel space with our new hotel, and had gotten enough people in San Diego interested in accepting the thing, I then—after I told Geneen about it, my job was done. From there on, I was finished, as far as I was concerned.

Senator KENNEDY. When did you talk to Mr. Geneen about this?

Mrs. BEARD. At the Luau.

Senator KENNEDY. In May?

Mrs. BEARD. May 12; yes, sir.

Senator KENNEDY. And can you recall what you said to him and what he said to you?

Mrs. BEARD. He didn't say much to me at all. As I started to tell you, it was outside on the golf course, what was the golf course, and there was several tables. I was going around talking to guests. Hal had called me over and I kneeled on the ground next to him, about something, I have forgotten what he wanted. Bud James, president of Sheraton, was sitting next to Mr. Geneen. Bob Wilson was sitting—if I hadn't stepped on the ground between them, Bob Wilson would have been sitting next to Geneen, and there were two—I think

Tim Donlevy and Jack Hapway—Tom Donlevy you don't know—of Geneen's immediate staff were sitting there, and I had said something to the effect how, you know, I think we could bring the convention here and it would certainly be nice for our three properties, and Hal looked at me and he looked at Bob Wilson and then he looked at Bud James and said, "Bud, that sounds like some pretty good sense. Now, how far do you think we should go?" And I left the table. I got up off my knees and wandered on about my business.

Senator KENNEDY. Who answered that question, "How far do you think we should go?" Since you were the one in charge of the negotiations, who was going to answer that question?

Mrs. BEARD. Bud James.

Senator KENNEDY. What was his role in this?

Mrs. BEARD. Well, the Sheraton Corp. would be the ones opening the hotels. They were responsible naturally for opening their own hotels.

Senator KENNEDY. Had he been involved in these conversations with you that you had in San Diego before?

Mrs. BEARD. No, sir.

Senator KENNEDY. Had he heard about this at all before?

Mrs. BEARD. No, sir.

Senator KENNEDY. Well, could you review for us the background that led you to believe that you could get the convention to San Diego? You mentioned earlier this morning you had traveled to San Diego, you visited some of the hotels and found out about how many rooms they had, that you visited San Diego fairly frequently, but no one in the ITT office was aware of this. And could you review for us specifically what conversations took place with whom prior to the May date that led you to believe that the convention could go to San Diego?

Mrs. BEARD. Well, first, Senator, I will have to tell you that since we have—I think it is 3 or 4 years now when they built Harbor Island, which you know is a manmade island right across from the airport. I had gotten a memo from some guy in New York that we would like to put a convention hotel on this site, see what it takes to get the property. I started going back and forth from San Diego right then, seeing the port commissioners, property divisions of the port commission, to see what—you know, what we were up against for bids. It was a beautiful site for a convention hotel, so we had to dig the hole and open that and go out and make arrangements for that, and I had to have a cocktail party with all the big people from San Diego there, and then we opened the cable plant, so we had to negotiate with the same port commission to get the land for the cable plant, which was in National City.

There was just one thing after another that I was out there on perfectly legitimate ITT business, and during this time is when I was—and I know the city pretty well, anyway. I was taking a reading for myself, saying, be sure that anybody—I went through all the Mission Valley and got a pretty good idea of what the rooms are, and it is going to be tight. It is going to be tight even with our new hotel, but I haven't talked to anybody about it for some time, but I am afraid some of those delegations are going to be kind of "fur" out there in the valley.

Senator KENNEDY. Now, whom were you talking to during this period of time? You weren't just walking through these hotels yourself?

Mrs. BEARD. No, I told you this morning that one of the finest managers we ever had, had been the manager of the Blackstone in 1968 and had been through many, many conventions. I did tell him——

Senator KENNEDY. So, besides the manager of the hotel, you were in touch with Mr. Reinecke? Was he the contact with the Republicans or——

Mrs. BEARD. I did not see much of Ed after that. We had our first talk about it. I hate Miami. You will never get me back there, even to bury me, so another reason to take this thing to any place—you know, Houston and Texas in August and Miami in August, uh-huh, so the actual—Gary Seland, the then manager of the Sheraton Inn, very, very clever boy, he had been through two or three conventions. He got the motel and hotel association people together and, as a newcomer to San Diego, more or less, he was having these various meetings. "Well, how many rooms do you have?" It was handled very cleverly, I think. I went with him many occasions. We had lunch with various managers of various motels and hotels. I looked over the arena, because I still don't see how they are going to have a convention in the arena, but—and there was a question of the acceptance speech, the stadium. The lighting would be so poor. There are a lot of things that haven't been resolved, but through Gary Seland—and he was the only person in San Diego, the only person in ITT who knew what we were up to, and I saw Ed Reinecke very, very rarely.

Senator KENNEDY. Well, with the exception of Gary and your one conversation with Mr. Reinecke in January——

Mrs. BEARD. Yes.

Senator KENNEDY. Everything else, so to speak, you were on your own? You didn't have any other conversations with either Mr. Reinecke, with any other spokesman for the Republican Party, or for anybody else from ITT? You just went out with Gary?

Mrs. BEARD. I was ordered there for other business, anyway, so I was—and Ed didn't know I was working for the convention. He didn't know that until the 12th of May.

Senator KENNEDY. What about Bob Wilson? Were you in touch with him during this time?

Mrs. BEARD. Well, I don't know whether you are aware of it or not, Bob Wilson and I have been friends and his wife, for, oh, years and years, and years, and at the time I made this statement Bob looked just a little annoyed, as a matter of fact, later said, "I thought we were friends. I seems to me you might have told me you were working on this. This is my district." And I said, "It was not my confidence. It was still a slim possibility."

Senator KENNEDY. Of course, your memorandum says that Wilson did know about it.

Mrs. BEARD. These were the people that were to know about it. You see, this was as of June 25, supposedly. It wasn't June 25. It was sometime.

Senator KENNEDY. And also, right after, it says, "has known," which would suggest that they already do know about it, doesn't it? "Other than permitting John Mitchell, Ed Reinecke, Bob Haldeman and Nixon (besides Wilson, of course) no one has known from whom that \$400,000 commitment had come."

Mrs. BEARD. Well, this was written a heck of a lot later than when I first started——

Senator KENNEDY. Well, you assumed when you wrote it that those gentlemen did know about it?

Mrs. BEARD. Somebody would have to be in the know then, because I already asked ITT what they planned to do, but——

Senator KENNEDY. But you assumed——

Mrs. BEARD. He never told me, "I went to see Mr. Mitchell, I spoke to Mr. Haldeman." He never said anything like that at all.

Senator KENNEDY. But when he spoke to you in January he indicated those would be the people he would talk to?

Mrs. BEARD. That would know about it if there was to be any feasibility or any possibility.

Senator KENNEDY. Now, going back now to after May 10th, after the luau or the meeting when you indicated to the ITT group there the possibility of the Republican Convention going to San Diego, am I correct in understanding your testimony that was the end as far as your participation?

Mrs. BEARD. This is what I thought would be the end as far as my participation. Yes, I had found——

Senator KENNEDY. Did you ever have any conversations after that May date with ITT officials or with Mr. Reinecke or——

Mrs. BEARD. As I said, Ed Reinecke came to Washington a couple of times, but we never discussed any details. I think I know what you are trying to get at, but——

Senator KENNEDY. Well, the point I was trying to get at was in the job description memorandum on the bottom it says, "The negotiations for the 1972 convention being held on ITT properties in San Diego have been wholly my responsibility," and that was admittedly the June 25th date which you agreed to?

Mrs. BEARD. Yes.

Senator KENNEDY. And if, after May 10th, you didn't have anything further to do with it, then I would wonder why you would——

Mrs. BEARD. Well, now, this was relating to getting the hotel built. This wasn't relating to any financing.

Senator KENNEDY. That isn't really what it says, Mrs. Beard. It says, "The negotiations for the 1972 convention being held on ITT properties in San Diego have been wholly my responsibility."

Mrs. BEARD. On ITT properties. At this point there was a section of land—I don't know whether it was 3 or 5 acres—between the Sheraton Inn and the Harbor Island Inn that belonged to the Port Commission. We had to have those 3 acres to join the two properties and they weren't too willing to give them to us.

Senator KENNEDY. Just this, and I am going to yield to my colleagues here, the latter part of the memorandum, the Anderson memorandum, now, do I understand from what you said this morning that you are hazy about it and you feel the language is either contradictory or inaccurate or confusing? Are you leaving it with us, your reaction to those, let's say——

Mrs. BEARD. Starting with where we left off this morning, "I am convinced, because of several conversations with Louie re Mitchell," I don't think I would even—well, I know I wouldn't talk about people like that.

Senator KENNEDY. You wouldn't—pardon?

Mrs. BEARD. I wouldn't talk about people like that in an official document. It would be Governor Nunn and Attorney General Mitchell or something. I only do my kidding face to face, not in writing, sir, because—anyway, going to "our noble commitment has gone a long way," that almost hit me in the eye. There was nothing noble about this commitment. We are trying to make some money out of three big properties and we intend—we hope to do so. They are all three in an excellent position.

Senator KENNEDY. Then the final two paragraphs on the other side on the next page—

Mrs. BEARD. Well, let me finish this one. "Certainly the President has told Mitchell to see that things are worked out." Now, how in the world—where would I ever get such a thing as that? I haven't seen Mr. Nixon—I have met Mr. Mitchell once. I haven't been in the White House once in the 3 years we have been in office. It absolutely sounds like a sentence dropped out of heaven or something. I don't mean heaven. Truly, it doesn't even follow. It makes no sense in the sense of the paragraph, Senator. "We all know Hal and his big mouth." I—

Senator KENNEDY. Well, isn't it possible that the President would have wanted things worked out fairly?

Mrs. BEARD. Well, surely, but how would I know it? "Certainly the President has told Mitchell to see that things—" this is the most outrageous thing. If you knew something like that and you were Mr. Mitchell, would you run around telling some little lonely lobbyist at ITT, "I've got it all fixed"? No, sir.

Senator KENNEDY. Then, the last two paragraphs—

Mrs. BEARD. Well, I know in 11 years I have never written a thing like this, "We all know Hal and his big mouth." I have said it to him on occasions, but I have never been disrespectful to that man, one of the most honest, decent human beings that I know. This last paragraph does sound very familiar.

Senator KENNEDY. The last paragraph does sound—

Mrs. BEARD. The first sentence. "I hope, dear Bill, that all of this can be reconciled between Hal and Wilson," which of course is referring, obviously, to is it services, is it Avis, is it cash or what is it going to be? There must have been a differentiation of belief in Hal's and Wilson's and Bud James' minds.

Senator KENNEDY. And you understand that from your own knowledge? How did you know about that if you hadn't talked to anybody since May 10 about it?

Mrs. BEARD. Just after I talked with Ned, Wilson called me, to report on his meeting with Hal. Hal at no time told Wilson that our donation would be in services only. So, obviously, whatever the disagreement was about, it was a misunderstanding between Wilson and Sheraton and Harold Geneen, which obviously eventually was straightened out, but from there on, sir, absolutely, it just doesn't make any sense.

Senator KENNEDY. Do I understand, then, that Mr. Gerrity was very much involved with these negotiations?

Mrs. BEARD. I am not sure to what extent that Ned was involved in it, because it was a Sheraton thing. Sheraton was to make whatever donations, and I would assume they would discuss with Geneen and his board of directors and such the extent that Sheraton—would be feasible for them to put into their properties, but I certainly figured

\$250,000 for one hotel in Hawaii, they could have gone a lot higher in actual cash for three in San Diego.

Senator KENNEDY. Would it have surprised you if they had gone to \$300,000 or \$400,000?

Mrs. BEARD. If they had?

Senator KENNEDY. Yes.

Mrs. BEARD. Yes, I would have.

Senator KENNEDY. Well, I thought you just mentioned they went for \$250,000 for one hotel in Hawaii. Would it have surprised you if they had gone \$300,000—

Mrs. BEARD. No, it wouldn't have surprised me if they had gone \$300,000, because this new convention hotel—I haven't seen it—it is supposed to be a beautiful thing. It is a very expensive one. We have had to up the price on it several times, due to the foundation.

Senator KENNEDY. Did you at any time gain an impression that the President was going to stay at the hotel?

Mrs. BEARD. I was told through, I think Gillenwaters or Reinecke, that very possibly there would be some arrangement made whereby our hotels would get some publicity.

Senator KENNEDY. What was that? That it would get some publicity or that the President would stay there?

Mrs. BEARD. Well, I don't think the President would be staying there at all.

Senator KENNEDY. It would be presidential headquarters?

Mrs. BEARD. Yes, presidential headquarters.

Senator KENNEDY. Mr. Reinecke or Mr. Gillenwaters—

Mrs. BEARD. I think it was Gillenwaters who said he was not sure. It would be probably for a lot of very good reasons. They have a helicopter pad right across the street. Harbor Island is very easily secured. Have you been out there lately?

Senator KENNEDY. No, I haven't.

Mrs. BEARD. Well, you could—if you walk to the end of the parking lot at the airport, you could spit on the hotel. It is just across Harbor Drive, and there is only one roadway or two—still, there is one spot just before the hotel that you can secure the whole island absolutely, no way anybody could get out.

Senator KENNEDY. I have just two very brief questions. I guess we better change tapes and I will get them.

(Brief recess.)

Senator KENNEDY. The original memorandum, the Anderson memorandum, conditioned by your statements before this committee and your prepared statement, did you ever give that to Mr. Merriam?

Mrs. BEARD. I want to be sure—

Senator KENNEDY. Not the—

Mrs. BEARD. Not the Anderson memo?

Senator KENNEDY. No.

Mrs. BEARD. You mean my own original memo?

Senator KENNEDY. Yes.

Mrs. BEARD. Yes, sir.

Senator KENNEDY. Fine, that included the paragraphs 1 and 2 and 3 through "but certainly some," and the first lines of the first full paragraph of the second paragraph, I guess?

Mrs. BEARD. The first paragraph is so familiar.

Senator KENNEDY. To you?

Mrs. BEARD. The third paragraph is where I absolutely get lost.

Senator KENNEDY. All right, but you did do a memorandum then, we call it the revised, the San Diego memorandum?

Mrs. BEARD. Yes.

Senator KENNEDY. And directed toward Mr. Merriam?

Mrs. BEARD. Right.

Senator KENNEDY. Did you deliver that to him?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. You did?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. And did you put copies in the file, do you know?

Mrs. BEARD. I always——

Senator KENNEDY. Or just make one copy?

Mrs. BEARD. I have a chronological file of pink sheets my secretary keeps. I have a white copy in a subject file, which was something that added a little more to my terror, Senator, the day I left Mr. Hume in the conference room and went back and asked the secretary and everybody to get out the June files for last year. There was nothing.

Senator KENNEDY. Well now——

Mrs. BEARD. There was no copy of my—not this Anderson version, but my memo written to Mr. Merriam at his request, you know, about this call they had got from the White House they wanted an answer for.

Senator KENNEDY. Did Mr. Merriam talk with you about it, or did he ever acknowledge that he did receive it? Did he talk with you about it subsequently?

Mrs. BEARD. No.

Senator KENNEDY. Did you hand it to him?

Mrs. BEARD. I handed it to him and he said thanks and then I suppose that answered the question that he had received from the White House.

Senator KENNEDY. But you gave it to him?

Mrs. BEARD. Yes.

Senator KENNEDY. And he never talked with you again about the memorandum?

Mrs. BEARD. No, sir. Now, we are talking about my own? We are not talking about the Anderson——

Senator KENNEDY. Exactly. Just finally then, Mrs. Beard, did you at any time feel in terms of your relationship with the ITT people in Washington that your job was threatened at all?

Mrs. BEARD. No, sir.

Senator KENNEDY. Never did?

Mrs. BEARD. Never.

Senator KENNEDY. And could you tell us how you got along with the people in the ITT office in Washington? That was a good and satisfactory relationship or——

Mrs. BEARD. Yes, it was with—they all liked me. They all put up with me. I don't know why. We had a—really had a wonderful group, but when the staff meetings got a little dull, which they insisted on having—usually the Tuesday staff meetings were pretty dull because who has been around in Congress on Friday, Saturday, and Sunday,

so my normal procedure was to stop that nonsense right quick with the filthiest story I could think of and shock them all back in their own offices and shorten the meetings a little. It worked.

Chairman HART. I wonder if Senator Gurney wants to pursue that.

Senator GURNEY. We may cover some of this ground again and again. It is not because we are trying to be verbose, but to some of us there are loose ends.

Mrs. BEARD. I realize that.

Senator GURNEY. First of all, of course, this is a hearing on a confirmation proceeding by the Senate for Mr. Kleindienst, who has been nominated for Attorney General, as you know. Mrs. Beard, did you ever discuss anything at any time with Mr. Kleindienst?

Mrs. BEARD. No, sir.

Senator GURNEY. Do you know Mr. Kleindienst?

Mrs. BEARD. I met Mr. Kleindienst once at a Governor's conference in Tulsa, Okla., and that was when he happened to be with a friend of mine, and I doubt seriously that he would even remember me.

Senator GURNEY. And that was just a social gathering, no discussion of any sort?

(At this point the witness exhibited signs of pain.)

Dr. RADETSKY. Let's recess for about 5 minutes, please.

Chairman HART. At the request of the doctor in charge, we are recessing for 5 minutes.

(Whereupon, at 4:05 o'clock p.m., the hearing was recessed.)

(The subcommittee subsequently determined to suspend further questioning of Mrs. Dita Beard.)

RICHARD G. KLEINDIENST

WEDNESDAY, MARCH 29, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m. in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Tunney, Hruska, Scott, Cook, and Gurney.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to the Senators.

The CHAIRMAN. The committee will come to order. Let's have order, please.

Senator ERVIN. I have one question.

The CHAIRMAN. All right.

Senator ERVIN. Mr. Geneen, if I recall the testimony correctly, there is testimony here that you went to talk to the Attorney General in company with Mr. Peter Flanigan of the White House staff; is that correct?

TESTIMONY OF HAROLD S. GENEEN, ACCOMPANIED BY PHIL E. GILBERT, JR., HOWARD J. AIBEL, AND JOHN S. MARTIN, JR.—

Resumed

Mr. GENEEN. Wait a minute. I didn't hear your question very well, Senator.

Senator ERVIN. If I understand the testimony correctly, there is evidence to the effect that you went to the Department of Justice accompanied by Mr. Flanigan of the White House staff and talked to the Attorney General in the presence of Mr. Flanigan?

Mr. GENEEN. No; that is not correct, Senator. I don't recall any testimony that I gave to that effect. In fact, it is just the opposite.

Senator ERVIN. Well, I may be mistaken because I don't have a perfect memory, but there is—did you go to the Department of Justice with Mr. Flanigan?

Mr. GENEEN. No.

Senator ERVIN. Did you talk to Mr. Flanigan about this matter?

Mr. GENEEN. No.

(775)

Senator KENNEDY. I think, if the Senator will yield just on that point, I think you indicated on your list that you called Mr. Flanigan; didn't you?

Mr. GENEEN. Yes. We submitted a list this morning, Senator, covering all the people that were covered in that release and the subject matters. I think the preliminary list you had earlier did not.

Senator KENNEDY. I think on the list that was provided, it indicated in your release, that in February 1971, you talked with Mr. Flanigan?

Mr. GENEEN. That is correct.

Senator KENNEDY. That was the last question of the Senator.

Senator HRUSKA. That was not the last question.

Senator KENNEDY. That was the last question of Senator Ervin.

Mr. GENEEN. Let me see if I can correct it.

There was a group meeting and there were about 25 people there, not on the subject of antitrust. It was a luncheon. It was on the subject, originally, on the subject of revenue sharing and reorganization of Government and a presentation to a number of business people. It was followed by a lunch, and we sat in the lunch, and in the lunch we were talking generally, speaking about business and Government regulations in general. Now, I included it because it gets in this general area, but I think any discussion per se of antitrust probably with the two or three comments—

Senator COOK. Would the Senator from North Carolina yield?

Senator ERVIN. Yes.

Senator COOK. I think what the Senator has in mind was the testimony of Mr. Rohatyn, a director of the company, who attended two meetings, one in the morning and one in the afternoon at the Attorney General's office relative to his position as chairman of the committee of the New York Stock Exchange, where Mr. Peter Flanigan was in attendance and also the president of the New York Stock Exchange, the president of the American Stock Exchange. It was also in regard to Mr. Ross Perot and the Du Pont brokerage firm.

Senator ERVIN. I want to thank the Senator from Kentucky for straightening me out on that. I have not been able to attend all the hearings and I have read some newspaper accounts and I am confused perhaps. I take it, Mr. Geneen, that you are testifying that never, at any time, on any occasion, under any circumstances, did you ever talk to Mr. Flanigan about antitrust laws or about these antitrust suits?

Mr. GENEEN. I don't recall any. I remember the luncheon; that is what I was speaking of.

Senator ERVIN. That is all.

The CHAIRMAN. Hugh?

Senator SCOTT. No questions; reserved.

Senator KENNEDY. I planned to go into some other areas but in your release, page 2 of the March 13 release, it says, "According to the spokesman, Mr. Geneen also registered his views on the Administration's policy"—I imagine that is antitrust policy—"with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan. . . ." That is what I understood Senator Ervin asked you.

(The ITT press release referred to follows:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORP.,
Washington, D.C., March 13, 1972.

ITT DETAILS MEETINGS WITH GOVERNMENT OFFICIALS

New York, March 13—In response to questions concerning meetings between high ranking government Administration officials and Mr. Harold S. Geneen, chairman and president of International Telephone and Telegraph Corporation, a spokesman for ITT today stated that in the three years since the new policy of the Antitrust Division has been followed, Mr. Geneen has talked to many members of Congress, the Government, the public, the Bar, shareholders and others on what he felt was the serious impact of this policy on the national interest, as well as on all of American industry.

The spokesman said that Mr. Geneen felt that changes in antitrust law should be made in Congress where hearings on all aspects of the national interest could be held before new legislation was enacted.

The spokesman continued, "Mr. Geneen's right to place his views before any an all members of the government involved in national policy is a constitutional right of all American citizens. It is the duty of any businessman or citizen to express his views when he feels he has a wrong that needs redress."

"Constitutional rights of businessmen," the spokesman said, "are entitled to as much respect and protection as the First Amendment rights are to a free press."

The spokesman said that Mr. Geneen's range of contacts included former Attorney General John N. Mitchell and Senators Philip A. Hart and Vance Hartke, as well as Chairman Emanuel Celler of the House Committee on the Judiciary and members of that committee, including Representatives Peter A. Rodino and Jack Brooks.

According to the spokesman, Mr. Geneen also registered his views on the Administration's policy with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan; with Paul W. McCracken, then chairman of the Council of Economic Advisers; with former Commerce Secretary Maurice Stans; with former Treasury Secretary David Kennedy; with Treasury Secretary John B. Connally; with Peter G. Peterson, when he was the White House advisor on international economic policy; and with other members of Congress including Senators Inouye (D-Hawaii), Hart (D-Mich.), Hartke (D-Ind.), McClellan (D-Ark.), Byrd (D-W.Va.), and Percy (R-Ill.), Representatives Ford (R-Mich.), Rodino (D-N.J.) Brooks (D-Texas), Wilson (R-Calif.), Celler (D-N.Y.), Boggs (D-La.) and former Representative MacGregor (R-Minn.).

ITT said it considers the consent decrees agreed to with the Justice Department to be extremely severe. The company had won two of the antitrust cases in lower courts and therefore felt its views about the merits of its position were shared by others responsible for antitrust interpretation.

Senator KENNEDY. Did you discuss antitrust policy with Mr. Flanigan—the ITT case?

Mr. GENEEN. This is a pretty broad view Senator. This was a luncheon. At the luncheon we expressed the whole attitude of business and Government. I touched on our attitude but I didn't touch on attitude and policy—

Senator KENNEDY. What did you mean when you talked about, in your release, registering your views on administration policy with Mr. Flanigan? Would you specify?

Mr. GENEEN. Well, I think the only thing I registered—there was a fairly sizable luncheon meeting and I expressed the view that the relationship of business to Government was certainly being increased—"improved" is the right word. McCracken was part of that discussion and some 20 other people, I think, and my comments were that I I didn't think we were going to be able to improve our relations unless we did something about it and my own feeling was that we had to have better relationships between business and Government in these various areas; and that is the general discussion that took place.

Now, that was a discussion that took place under the auspices of Mr. Flanigan who called us all down for this meeting and I don't recall any other details of the meeting, but, substantially, I didn't hesitate to record these general views.

Senator KENNEDY. Who else was at that meeting?

Mr. GENEEN. I don't know, but I suppose they would have a list of them. They were all outside people. Well, let me say Mr. McCracken was at the meeting.

Senator KENNEDY. Who called the meeting?

Mr. GENEEN. I was invited to the meeting and I believe the invitation came from Mr. Flanigan.

Senator KENNEDY. What was the invitation for? What type of meeting? What did he do, just call you and say, "We are going to talk about the business climate," or talk about the antitrust policy?

Mr. GENEEN. No. I got a notice of the meeting from the Washington office.

Senator KENNEDY. Which Washington office?

Mr. GENEEN. Our Washington office.

Senator KENNEDY. Your ITT office?

Mr. GENEEN. That is correct and as I recall, the presentation of the the economic situation by Mr. McCracken. There were some comments made by Assistant Secretary Packard about the military situation and more about the budget, basically; and I can't remember what other general comments there were but the main thrust of it, as I understood it, was to explain the new program, the revenue sharing and for the reorganization of the Government, as I recall. We each got a pretty thick folder on each of these subjects, and we adjourned and went to lunch. The lunch was much more informal and I think I sat next to McCracken and we got into the general matters of economy—that was the thing to do with Mr. McCracken—and some of the things we could do, let's say, to improve our competitive ability, and, basically, the relationship of business and Government. I discussed my views on that.

Senator KENNEDY. Did you talk about antitrust policy?

Mr. GENEEN. I don't think I touched on it, except, you might say, in a very restrained way. This was a group of people and I don't think it was an area that we would go into very great detail.

Senator KENNEDY. Did you ever have any conversation with Mr. Flanigan other than about antitrust policy?

Mr. GENEEN. No; I don't think so. I don't think I can recall ever talking to him about it.

Senator KENNEDY. Did you ever have any correspondence or phone conversation with Mr. Flanigan?

Mr. GENEEN. No, not to my knowledge.

Senator KENNEDY. The reason I ask, Mr. Geneen, is because, you know, in this release you give ITT's detailed list of meetings with Government officials about antitrust law and it indicates that on the press release, and then it mentions Mr. Flanigan's name on this. As I gather from what you are saying here, you just attended a general meeting that was called by Mr. Flanigan or he chaired a meeting that was concerning the general business climate?

Mr. GENEEN. That is correct, and I expressed some general views.

Senator KENNEDY. Did you say you had an additional list here?

Mr. GENEEN. No; I think we put in a more accurate—I wouldn't say accurate—I checked out some of the dates alongside of each of the names I put down the subject matter of what we talked about.

Senator KENNEDY. You had in this list the date of February, 1971. Do you have any—do you know when that date was in February, 1971?

Mr. GENEEN. I don't have any better—have you got the final list, Senator, or the earlier one?

Senator KENNEDY. Well, there are so many lists and memorandums here that I don't know which it is.

Mr. GENEEN. The one that came in this morning says "Schedule A."

Senator KENNEDY. I haven't gotten that one this morning.

Mr. GILBERT. No. Excuse me, Senator, in response to the written request from the committee, we did prepare, in response to item 1, we did prepare a revised and corrected list of all those meetings which we have.

Senator KENNEDY. Can we have that?

Mr. GILBERT. Certainly.

Senator COOK. We would all like it if we could have it.

Senator ERVIN. It has been called to my attention by a member of the staff that none of these lists and exhibits they are referring to are in the record and I would suggest that it be placed in the record so people can understand what the questions are about.

(Letter from ITT dated March 28, 1972 and schedule A follow:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORP.,
New York, N.Y., March 28, 1972.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: In response to a request by the Committee made during the course of my testimony during the week of March 13, I attach hereto, as Schedule A, a revised list of the visits which I had with government officials about which I was questioned (Tr. 1205-6).

This schedule reflects my best present recollection as to the persons visited, the dates on which those visits were made, and the subject matters discussed. It is intended to be substituted for the list submitted on March 24, 1972, by counsel, Skadden, Arps, Slate, Meagher & Flom, which I did not have an opportunity to personally review prior to submission.

Sincerely,

H. S. GENEEN.

SCHEDULE A

Late 1971:

Sen. Daniel K. Inouye—Government-Business Relations.

Sec. John Connally—Internat'l Monetary Policy, OFDI Policy, Foreign Investment Policy, Expropriation Policy.

Mr. Charles Colson—OFDI Policy.

Mr. James Lynn—OFDI Policy.

Mid 1971:

Mr. Peter Peterson—Internat'l Monetary Policy, Foreign Investment Policy, Internat'l Trade Policy, OFDI Policy, Expropriation Policy. A second meeting which was a group meeting on International Trade Policy and Economic Planning.

Mr. Charles Colson—OFDI Policy.

Rep. Bob Wilson—Review of Speech on Modular Housing given by Rep. Wilson in New York, personal fishing trip.

Feb. 1971: Mr. Peter Flanigan—Group meeting and lunch on Revenue Sharing and Reorganization of Government.

Before Feb. 1971: Sec. David Kennedy—Antitrust Policy and Balance of Payments Policy.

Early 1971: Chairman Paul McCracken—Antitrust Policy and Balance of Payments Policy.

April 1971:

Mr. Peter Peterson—Antitrust Policy, Balance of Payments Policy, International Trade Policy, Productivity, Expropriation Policy.

Sec. John Connally—Antitrust Policy, Foreign Investment and Balance of Payments Policy.

Aug. 1970:

Atty. Gen. John Mitchell—Antitrust Policy.

Mr. John Erlichman—Antitrust Policy and Balance of Payments Policy.

June 1970:

Sen. Sam J. Ervin, Jr.—Bill for Expediting Act Revision.

Sen. Philip A. Hart—Conglomerate Policy, Celler Committee Hearings, Bill on Expediting Act Revision, Possible Hearings Senate Sub-Committee on Antitrust.

Mid 1970: Sen. Vance Hartke—Conglomerate Policy, Antitrust Policy.

Early 1970:

Rep. Emanuel Celler—Conglomerate Policy and Hearings.

Sen. Charles Percy—Antitrust Policy and other.

Sec. Maurice Stans—Government-Business Relations, Antitrust Policy.

Before Feb. 1970: Mr. Arthur Burns—Antitrust Policy and Balance of Payments Policy.

Late 1969:

Rep. Peter Rodino—Celler Committee Hearings, Antitrust Policy and Conglomerate Policy.

Rep. Jack Brooks—Celler Committee Hearings, Antitrust Policy and Conglomerate Policy.

Rep. Clark MacGregor—Celler Committee Hearings, Antitrust Policy and Balance of Payments Policy.

Rep. Hale Boggs—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.

Rep. Gerald R. Ford—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.

Sen. Robert Byrd—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.

Sen. John L. McClellan—Antitrust Policy, Conglomerate Policy, Balance of Payments Policy.

Early 1969: Sec. Maurice Stans—Antitrust Policy.

Senator KENNEDY. You see, Mr. Geneen, when you mention that you saw Mr. Flanigan at the luncheon, you have different dates down here for this meeting with Mr. Flanigan from what you have for Mr. McCracken, which is why—as I say, I don't want to spend a lot of time on this particular item.

Mr. GENEEN. I understand but I was going to explain that, Senator. I made a call to Mr. McCracken at his office. That is the best date I can remember.

Senator KENNEDY. How are we expected to know whether these people you indicated on the preliminary list were people who attended general meetings?

Mr. GENEEN. Well, I think the supplementary list of group meetings, the group meeting and luncheon and Mr. McCracken as a specific call on purpose.

Senator KENNEDY. I would like to come back when I have had a chance to go over the list.

Mr. GENEEN. Yes.

Senator KENNEDY. In your last appearance here, you provided us with an interim report on the shredding operations.

Could you give us any idea whether there is a final report from you?

Mr. GENEEN. A final report?

Mr. GILBERT. I can tell you about that, Senator.

We do have a final additional report on the document business in Washington, which is one of the items called for in the list we got of requested documents, which is item 3 on the list, and we have that.

Senator KENNEDY. Could we have that?

Mr. GILBERT. Yes.

Senator KENNEDY. Could you tell us what else you have there in the rest of it?

Mr. GILBERT. Well, Senator—

Senator KENNEDY. What we requested—all the things we requested?

Mr. GILBERT. We have a list of documents which you requested.

Senator KENNEDY. Yes.

Mr. GILBERT. To the extent—which is a written list received from the committee—and to the extent we have anything responsive, we have collected it and we have all of those items, which number 10.

Senator KENNEDY. Right.

Mr. GILBERT. And the first item which you requested was item 1. I guess you have the same list there?

Senator KENNEDY. Yes; I have got it.

Mr. GILBERT. And we have item 3 to which you just referred which is the ITT report concerning what you call shredding.

Senator KENNEDY. Well, can you supply those?

Mr. GILBERT. Yes, sir.

Senator KENNEDY. Now, for the record?

Mr. GILBERT. Yes, sir. And I have some copies. I don't know whether I have enough copies of all of them. I can give you—I can get some more, too—here are three.

Senator KENNEDY. How many copies are you providing of these documents?

Mr. GILBERT. Well, I think we can probably supply, in most instances, about five and we can get some more.

Senator Cook. I think it is the responsibility of the committee to make copies of things that have been requested and supply them to the members.

Mr. GILBERT. Yes.

Senator KENNEDY. That is fine.

Mr. GILBERT. Excuse me, Senator. For the purposes of the record, because we do have this written request, we have just handed to the committee item 1 on the list of documents which have been requested which is the list of dates of contacts made by Mr. Geneen with Government officials concerning ITT cases or antitrust policy; and we have also just supplied item 3, which is the final ITT report concerning the shredding activity; and we will have some others responsive to those requests but we don't have items on all of them.

Senator KENNEDY. What about item No. 2? Are you providing any material for that?

Mr. GILBERT. Yes; we do have. We have collected what we have on item No. 2, which is all memoranda and reports reflecting ITT lobbying activities in 1969, 1970, and 1971, relating to the ITT cases or antitrust policy, along the lines of the requests by Senator Hart, I believe, in the transcript on pages 1290 and 1291 (of the typewritten record).

Senator KENNEDY. Then you would just—are you supplying that to us now?

Mr. GILBERT. I can supply it to you at any time. If I could make a suggestion: each time, if we could say what it is we are turning over, so that you can easily get it in the transcript—

Senator KENNEDY. Well, could you provide for us, then, what you have in response to the requests of the committee for those 10 items and tell us what you are providing for us?

Mr. GILBERT. Yes; I can do that. Do you want, does the committee want each of these items and a response to each of these things now?

Senator KENNEDY. Yes.

Mr. GILBERT. All right.

Senator KENNEDY. At least I do.

Mr. GILBERT. On item 2, the memoranda and reports reflecting ITT lobbying activity in 1969, 1970, and 1971, relating to the ITT cases or antitrust policy, we have gone through all our files and we have, in this instance, a great number of sheets which include that data and I have that in two copies; and if somebody wants them, I can hand them over now.

Senator SCOTT. It might be nice if one copy could come to this side of the table so we do not continue in complete ignorance of what is being talked about. Will this gentleman who picks them up distribute them that way?

Senator COOK. Mr. Chairman, I am wondering if under the circumstances, because I frankly think that all of us ought to have copies of these things before questions are asked that pertain to them, if we might have a short recess so that copies can be made of these items, whatever they may be, and everybody can have them in front of them.

Senator KENNEDY. Could I just—on that, could we get the material and have copies made, and we can explore other areas rather than dragging this out?

Senator COOK. Fine; that's all right.

Mr. GILBERT. Yes, sir; that is a good suggestion because on this next item there are quite a number of sheets and it will take a while.

Now, here is one set of the documents in response to item 2.

Senator COOK. Why don't you mark them item 2, so that we know?

Senator KENNEDY. Mr. Gilbert, how many pages is the final shredding report? Do you remember, approximately?

Mr. GILBERT. I have it right here. Three.

Senator KENNEDY. Three?

Mr. GILBERT. Right. Here is a duplicate set of the documents which I just supplied in connection with item 2. These are loose and they are a little hard to handle.

Now, while you are here, we also have in a looseleaf binder the reports or documents labeled "Reports from Washington, ITT," which is a printed document in a looseleaf binder which we can also supply, which is, I suppose, responsive to this request.

Senator ERVIN. If I may have the attention of the committee, the staff informs me that it will be impossible for them to provide duplicate copies of all these this morning.

Mr. GILBERT. Yes, sir; that is what I say. If they want to duplicate these, some of them are very voluminous. We also have in a looseleaf binder—

Senator ERVIN. I just wonder why these were not made available before today?

Mr. GILBERT. Because we just got them, sir. I believe we brought them down last night. I brought them down.

We also have in a looseleaf binder copies of the ITT Legislative Review to the extent responsive to this request under item 2.

While we are on it, while the gentlemen are distributing those, I can tell you about some others on this list.

Senator KENNEDY. Mr. Chairman, could we have just—the shredding report is only three pages; perhaps the staff could get that Xeroxed. We have got five copies available for the committee. If we can limit it to that.

Mr. GILBERT. Now, Senator, you want me to go on with these other items?

Senator KENNEDY. Yes; if you could just very briefly. You are supplying all this material to the committee, and I think we would assume you are supplying what we requested and if you are not, if you could just indicate on that item we can move very quickly.

Mr. GILBERT. All right.

Item 4, which is any memorandums or reports reflecting any instructions issued to any ITT security officers regarding ITT security, missing documents, document destruction or shredding subsequent to February 1, 1972. We have none.

Item 5, any memoranda or other documents reflecting the instructions issued to employees of the Washington ITT office concerning the destruction of records, or reflecting the meeting at which such instructions were issued. We have none, except the items which were already supplied at the last session in connection with the first report on documents. They have already been supplied.

I have data on item 6 and 7.

Item 8 calls for page 2 and any other pages which followed the page of the Beard memorandum which was released by ITT with its press release of March 20, 1972. The response is, there is none.

Item 9, I have some data.

The final item, which is item 10, presents a special problem. Item 10 calls for all medical records in the possession of ITT pertaining to Mrs. Dita Beard in accordance with Mrs. Beard's previous waiver with respect to medical information. Now, we have collected all that, and we have it. However, we do not have any waiver either from Mrs. Beard or from her doctor. We have it; it is sealed; I have never read it and so far as I know neither has anyone else except the doctor who kept the records. I don't really know what we can do about that one because we don't have any waiver.

Senator KENNEDY. Who was her doctor? Is that Dr. Liszka?

Mr. GILBERT. No; that isn't Dr. Liszka. There is the doctor on the company staff. Mr. Geneen reminded me—Dr. Lauer.

Senator KENNEDY. As you remember, Dr. Liszka talked with some freedom about Mrs. Beard here. This is different?

Mr. GILBERT. Yes, Senator; he is a different doctor.

Senator KENNEDY. He is a different doctor.

Mr. Chairman, we have the shredding memorandums here and it was done by Mr. Aibel. Is he here?

Mr. GILBERT. Yes; he is here.

Senator KENNEDY. Is it possible that he could join you, since he prepared that?

Mr. GILBERT. Yes.

Senator KENNEDY. Can he read it in the record, then?

Could I ask, Mr. Chairman. Mr. Aibel prepared this memorandum. It is three pages.

The CHAIRMAN. I don't know what your memorandum is.

Senator KENNEDY. It is on shredding. Could you proceed? Would you read it?

Mr. AIBEL. Yes, sir. This is a memorandum dated March 28, 1972, directed to Mr. H. S. Geneen, on the subject of "Report on Further Investigation of Document Destruction in Washington Office."

Following the preparation of the original report on the destruction of documents in the Washington office of ITT, a further investigation into this matter was made. In order to verify the information we originally received and to avoid the problems inherent in having a single investigation divided between several individuals, one attorney, John S. Martin, Jr., was requested to conduct new interviews with each member of the staff of the Washington office. Thirty-one of the 33 employees of that office were interviewed, the two exceptions being Mrs. Beard and Mr. Stone, who has been out of the office on sick leave since February 18, 1972.

The following are the results of these recent interviews as they have been reported to me:

First, each of the people interviewed was asked if he had ever seen the alleged Beard memorandum in any ITT files. None of the employees of the Washington office had ever seen this document prior to the time Mr. Hume produced the alleged memorandum in the Washington office and, thereafter, a thorough review of the files of the Washington office was made and no copy of this memorandum was found.

Second, each of the employees in the Washington office was asked if he had ever seen any document that in any way linked ITT Sheraton's commitment to the San Diego Tourist and Convention Bureau to the settlement of the antitrust cases and each person said that he had never seen any such document.

All of those who attended the staff meeting on February 24, 1972, at which Mr. Merriam suggested that the staff undertake a review of their files, were questioned whether Mr. Merriam had disclosed the substance of the alleged Beard memo or whether he had specified any particular categories of documents that should be thrown out. Those who attended the staff meeting were in complete agreement that Mr. Merriam had not divulged the contents of the alleged Beard memorandum and spoke in most general terms about reviewing their files to remove old, unnecessary and potentially embarrassing documents. Mr. Merriam did not refer to any specific categories of documents. There was also complete agreement that Mr. Merriam had referred to the record retention policy of ITT and suggested that the staff dispose of any documents that should no longer be retained under the ITT policy guidelines.

In view of the questions raised by Senator Tunney at the hearing on March 16, an attempt was made to determine how many of the employees of the Washington office were aware of the contents of the alleged Beard memorandum at the time the file review was conducted.

Of the 31 people interviewed, only 10 were aware of the contents of the alleged Beard memo at the time of the file review. This included Mr. Merriam and Mr. Ryan, the director and deputy director of the Washington office; their secretaries, who were asked to search their files to see if there was a copy of the memorandum and who found no such copy; Messrs. Horner and Goodrich, the two press relations men who sat in with Mrs. Beard at the meeting in the office with Mr. Hume; Messrs. Schmidt and Joyce, whose offices are immediately adjacent to Mrs. Beard's and who also work in the general area of congressional relations; and Mrs. Beard's secretary and the secretary who sits next to her to whom she divulged the contents. None of these 10 individuals threw out or destroyed any documents relating the settlement of the antitrust cases to the San Diego convention. Indeed, the only documents relating to the San Diego convention that anyone in the Washington office ever saw were those in Mrs. Beard's files which consisted of brochures and tourist information relating to hotels operating in San Diego, brochures, plans and similar information on the new ITT Sheraton Hotel in San Diego, and a file with some general information concerning preliminary arrangements for the convention such as the need for press rooms and arrangements for a hospitality suite.

Senator KENNEDY. Was that shredded, Mr. Aibel?

Mr. Aibel, was that shredded?

Mr. AIBEL. My information was that it was, yes. I am not sure whether it was shredded or thrown out, Senator. It was disposed of. Relatively few documents, I am told, were actually shredded; many of them were just heaved into the wastebasket.

Senator Hart asked that the inquiry as to document destruction extend to consultants to the Washington office who are not employees of ITT. Such inquiries were made of the three consulting firms retained by ITT's Washington office, the firms of Alwyn F. Mathews, Sorin Hall, Inc., and the Washington Consulting Group. In response to questions by Mr. Martin, Mr. Mathews, Mr. J. R. Gorman of Sorin Hall and Mr. Gleason of the Washington Consulting Group responded that (1) the alleged Beard memorandum had never been seen prior to its release by Mr. Anderson, (2) no documents originating with ITT or relating to ITT which in any way linked ITT Sheraton's commitment to the San Diego Tourist and Convention Bureau to the settlement of the antitrust cases were destroyed, and (3) never in fact had anyone in the firms seen any such document.

Finally, with respect to the question whether the members of the Washington staff attempted to frustrate any inquiry by the Senate committee or any legitimate governmental inquiry, note must be taken of the chronology of pertinent events. The alleged Beard memorandum was first produced at the Washington office by Mr. Hume on February 23. The review of the files occurred the following day, February 24, at which time it was not known whether Mr. Anderson would print or otherwise use this memorandum. On that same day, February 24, the Senate Judiciary Committee voted unanimously to recommend the confirmation of Richard Kleindienst to be the Attorney General—Mr. Kleindienst is not mentioned anywhere in the alleged Beard memorandum. Mr. Anderson's first column on the alleged Beard memorandum was not published until February 29, and the Judiciary Committee did not reopen its hearings on Mr. Kleindienst's nomination

until March 1, 1972. In view of the fact that the file review by the staff of the Washington office occurred about a week prior to the Judiciary Committee's decision to reopen its hearings and at a time when Mr. Kleindienst's name had not even been mentioned in connection with the alleged Beard memorandum, it is self-evident that those in the Washington office who conducted the file review had no reason to anticipate an investigation by the Senate Judiciary Committee or any other governmental agency, nor were they aware of any outstanding official request for production of documents from the files of the Washington office. As reported earlier, the motivation of the ITT personnel involved in this file review appeared to be that of ascertaining whether files were missing and to forestall the theft of any additional documents from the ITT files.

The memorandum concludes with my signature

The CHAIRMAN. Marlow?

Senator HRUSKA. Mr. Chairman, I had not asserted my right to 10 minutes and I hope my 10 minutes will be the same as the 10 minutes taken by my colleague. Would you defer?

Mr. Chairman, it should be clear by now that these hearings have reached the point that termination should occur. This is the 11th or 12th day of hearings. It is the longest confirmation hearing in the memory of any member of the Judiciary Committee. The runner-up was that of Justice Fortas when he was nominated to be Chief Justice, which lasted 9 days, and this one has already exceeded that record by 3 or 4 days.

Not only that, but the great bulk of the testimony and questions to which answers have been requested have been irrelevant. It has been repetitious; it has been trivial; it has been pursued for dilatory and obstructive purposes. There isn't any bearing in that great bulk upon the issue before us, which is the impropriety, if any, in the conduct of Mr. Kleindienst in the pursuit of his duties. There is no proof and no competent evidence to show any wrongdoing on his part, nor any impropriety in any way, in any connection. There is no linkage shown between Mr. Kleindienst and any efforts to locate a convention in San Diego or any of the negotiations or actions thereof.

There is every evidence that there is intent on the part of some members of this committee to pursue in unending fashion the same tenor and the same trend that has been evident in the hearings thus far.

Mr. Chairman, I make a request that we resolve ourselves into an executive session for the purpose of considering the motion which I intend to make, that these hearings be discontinued and terminated.

The CHAIRMAN. Let me say right there, to begin with, we don't have a quorum. [Laughter.]

If we had a quorum, I wouldn't agree to it.

Now, I don't mind the committee working its will. I have had that same request from a number of other members of the committee. I think that notice should be given and a date set for an executive session to pass on a matter like that. I wouldn't mind calling an executive session a week from today.

Let the committee work its will, but I am not going to call an executive session without notice to all the members. I wouldn't call one now if we did have a quorum.

Senator HRUSKA. Mr. Chairman, that appeals to me as fair, not only the matter of a lack of quorum but also that notice of so impor-

tant a step should be given to those members who are not present. I would be willing to accede to that; in fact, I would favor it.

Do I take it from the statement of the chairman that he would call an executive meeting for this purpose?

The CHAIRMAN. I don't mind the committee working its will. Yes; I will call it.

Senator TUNNEY. Mr. Chairman, at that time would it be appropriate to bring up the subject of the Life magazine charges which would indicate that there was——

The Chairman. You can bring up anything that you are big enough to bring up. [Laughter.]

Senator TUNNEY. I think I am big enough. [Laughter.]

The CHAIRMAN. Then bring it up. [Laughter.]

Senator KENNEDY. I think, Mr. Chairman, I would certainly hope that——

Senator HRUSKA. Mr. Chairman, that was a mighty short 10 minutes that I had. I have not relinquished the floor.

Senator KENNEDY. Would the Senator yield?

Senator HRUSKA. I know the Senator from Massachusetts has much vital information to get from the witnesses, vital to prolong the hearings and the duration thereof, but, really, it might be better if each of us had our 10 minutes or as long a 10 minutes as every other member.

Mr. Geneen, you testified a little earlier this morning about the general talk that you had with Mr. Flanigan during the course of the lunch. Was the meeting called for the purpose of having that conversation?

Mr. GENEEN. No; it was not. I am assuming here it was probably part of a series of meetings where people were being exposed to revenue sharing and the reorganization of the Government, which was then an action that the administration was beginning to put forward.

Senator HRUSKA. And there were other businessmen present?

Mr. GENEEN. That's right.

Senator HRUSKA. And it was a general meeting?

Mr. GENEEN. That is right.

Senator HRUSKA. Do you feel, by having associated with Mr. Flanigan in the fashion which you described and also participated in that meeting, that you are either to be condemned or highly suspected or charged with improper conduct of any kind?

Mr. GENEEN. No.

Senator HRUSKA. You don't?

Mr. GENEEN. No, sir.

Senator HRUSKA. You have named others who were present, haven't you?

Mr. GENEEN. At that particular meeting?

Senator HRUSKA. Yes.

Mr. GENEEN. Well, only the people I remember that officiated at it and this was Mr. McCracken, and Mr. Packard, as I recall.

Senator HRUSKA. What about business, other members of the business community?

Mr. GENEEN. I don't particularly recall who was from the business community at the meeting. There were—my memory is—10 or 15 of them.

Senator HRUSKA. There were 10 or 15 business leaders present other than those you have named who represented the Government?

Mr. GENEEN. That is correct.

Senator HRUSKA. Do you see any relevance, Mr. Geneen——

The CHAIRMAN. Wait just a minute.

I will place in the record the report signed by J. Edgar Hoover from the Federal Bureau of Investigation on the documents which were sent to them.

(FBI letter dated March 23, 1972, follows:)

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., March 23, 1972.

HON. JAMES O. EASTLAND,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

MY DEAR MR. CHAIRMAN: In accordance with your request, there are set forth below the results of the examinations conducted by this Bureau's Laboratory in the Dita D. Beard matter. The submitted documents, which are listed on the attached page, include an original two-page memorandum purportedly from D. D. Beard to W. R. Merriam dated June 25, 1971, and listed herein as Item 1. Also included are numerous items of typewriting and handwriting to be compared with Item 1. These comparison items are listed herein as Items 2 through 14. Items 2 through 7 consist of a six-page typewritten "Memo" and are reportedly notes of Britt Hume. Item 8 consists of photocopies of two pages of handwriting of Dita D. Beard.

Items 9 through 14 were submitted as known samples of typewriting each purportedly made on the typewriter used to prepare the Beard memorandum, Item 1, and each bearing a date purportedly indicating its time of preparation.

On this basis, from a detailed analysis of the various documents, it has not been possible to establish definitely whether the Beard memorandum, Item 1, was prepared on or about its purported date, June 25, 1971, or whether it was prepared at some other time. However, nothing was found from such examinations to suggest preparation at a time other than around June 25, 1971; on the contrary, certain similarities between the Beard memorandum, Item 1, and those comparison documents dated near June 25, 1971, suggest, but do not definitely establish, that Item 1 may have been prepared around June 25, 1971. These similarities are as follows:

(A) On the basis of the chemical tests possible within the time available, the typewriting ink on Item 1 appears substantially similar in composition to the typewriting ink appearing on all submitted comparison documents bearing dates of June 28, 1971, and earlier. In contrast, the ink appearing on Item 1 is definitely different from the inks appearing on all comparison documents dated after June 28, 1971. A factor which prevents these findings from being positive proof, of course, is the ease with which typewriter ribbons can be substituted or replaced on a typewriter. Thus, on the basis of the material made available for examination, one cannot exclude the possibility that a ribbon like that used during most of June, 1971, may have been substituted, if only temporarily, during some later period, even though such substitution does not appear in any of the known samples submitted and bearing dates after June 28, 1971.

(B) Examination of the left margin indentation and the paragraph indentation on the various typewritten documents reveals that both these indentations on the Beard memorandum, Item 1, are closely similar to the corresponding indentations on all comparison documents dated June 25, 1971, through June 30, 1971; and further reveals that either or both of these indentations differ from corresponding indentations on all comparison documents bearing dates before June 25, 1971, and after June 30, 1971. Here again, because of the ease of changing either or both of these indentations on a typewriter, one cannot exclude the possibility of having both the margin and paragraph indentations, which occur during the latter part of June, 1971, reoccur at some other time; however, as indicated above, such reoccurrence does not appear in any of the remaining material submitted for examination.

None of the remaining examinations possible are of assistance in bearing on the authenticity of the Beard memorandum; however, the findings from such remaining examinations are set forth below:

(C) The initial "D" on the Beard memorandum is too limited to permit a determination whether it was or was not written by the writer of Item 8, reportedly prepared by Dita Beard. In this regard, where extremely limited writing is involved, as in the present instance, it is essential that original known writing, preferably contemporaneous with the questioned writing and prepared in the normal course of business, be available for comparison purposes. No such known writing standards have been submitted; rather, the known writing available is only a photocopy, appears to have been made from dictation or other instruction, and is understood to be of more recent origin. It is further noted that although there are two memoranda ostensibly prepared for Beard's signature among the known documents submitted for comparison, Item 9 dated June 2, 1971, and Item 13 dated June 25, 1971, neither of these memoranda bears an initial or signature purporting to be that of Beard, although the questioned Beard memorandum, Item 1, does bear the initial "D" near the name "Beard." The significance of this, if any, is unknown.

(D) A detailed microscopic examination of the Beard memorandum, Item 1, and the various known typewritten documents submitted for comparison revealed no progressive typewriting defects contained therein during the period spanned by the submitted documents, and therefore no information bearing on the date of preparation of Item 1 can be drawn from such examination.

(E) The watermarks appearing on the paper used for the Beard memorandum, Item 1, appear in documents dated both before and after June 25, 1971, including documents dated as recently as February and March, 1972. Accordingly, based on the material submitted for examination, no time significance can be attached to the use of the specific paper used for Item 1.

In addition to the above results, the following information was also developed from examination of Item 1:

(1) No intended writing or erasures were found on Item 1.

(2) The first page of the letter contains the watermark, "Gilbert Bond 25% Cotton." This watermark is registered to the Mead Corporation, Dayton, Ohio. The second page of the letter contains the watermark, "Eagle A Trojan Bond 25% Cotton Content." This watermark is registered to the Brown Company, Los Angeles, California.

(3) The typewriting on Item 1 was prepared on an IBM Model C machine equipped with a style of type called, "Documentary." The typewriting has a $\frac{1}{2}$ inch pitch and a line spacing of $5\frac{1}{4}$ lines per inch. This style of type was first used in 1947.

The following results were also obtained regarding Items 2 through 7:

(1) The Hume notes, Items 2 through 7, above, were prepared on a typewriter equipped with a style of type found on Royal typewriters, horizontally spaced ten letters per inch. The paper in the Hume notes contains no watermark or other indication as to source. The paper is yellow in color, unruled and measures approximately 8.51 inches by 11.04 inches.

(2) The Beard memorandum was not prepared on the typewriter used in the preparation of the Hume notes.

In accordance with your prior authorization, where necessary, small samples were removed from certain of the documents to conduct the requested examinations. In addition, some of the examinations involved staining of small areas on certain of the documents. These documents requiring removal of samples or staining were photographed in their original condition prior to such examination.

The items received from your office on March 21, 1971, are returned herewith. The two-page memorandum dated June 25, 1971, has been previously examined as Item 1 and the one-page memorandum dated June 25, 1971, has been previously examined as a portion of Item 13, with results as set out above. Other analytical tests, inherently more time consuming, are currently in progress on small specimens removed from these two documents, and in the event any further significant information is developed, you will be promptly advised.

Sincerely yours,

J. EDGAR HOOVER.

Enclosures (3).

The following documents were submitted to the Laboratory for examination:
Item 1: Two-page Beard memorandum dated June 25, 1971.

Item 2: Six-page typewritten "Memo for record" dated through "February 24," reportedly notes by Britt Hume.

Item 7: Interview of Dita Beard.

Item 8: Two photocopies of handwriting of Dita D. Beard.

Item 9: International Telephone and Telegraph (ITT) interoffice memoranda and letters dated June 2, 1971, June 28, 1971, June 30, 1971, July 9, 1971, July 15, 1971, and July 29, 1971 (two letters).

Item 10: District of Columbia Chamber of Commerce letter and ITT letter dated December 22, 1971, and January 25, 1971, respectively.

Item 11: ITT letter dated February 18, 1972.

Item 12: Exemplars of typewriting from IBM typewriter, Serial Number C13-2067756 PE dated March 17, 1972.

Item 13: ITT letters dated June 23, 1971, June 25, 1971, June 28, 1971, July 30, 1971, August 3, 1971, August 4, 1971, and December 2, 1971.

Item 14: Exemplars of typewriting from IBM typewriter, Serial Number C13-2067756 PE dated March 19, 1972 (prepared by FBI examiner).

Senator HRUSKA. Do you see any relevance, Mr. Geneen, of that meeting to anything Mr. Kleindienst has done or any action he has taken?

Mr. GENEEN. None whatsoever.

Senator HRUSKA. Mr. Chairman, I should like to have placed in the record an insert that was made in the Congressional Record on March 23, 1972, consisting of the transcript of the CBS interview with Judge McLaren held on the preceding Sunday. That broadcast was on March 19.

(Excerpt from the Congressional Record, March 23, 1972, "Richard W. McLaren and the ITT," follows:)

RICHARD W. McLAREN AND THE ITT

Mr. HRUSKA. Mr. President, in 1969 President Nixon appointed one of the most distinguished members of the antitrust bar to be the new Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. That man, Richard W. McLaren, has just completed 3 years of exemplary service to the Nation as the head of this important office. He recently resigned to become a U.S. district judge for the northern district of Illinois.

During his term of office, Mr. McLaren was hailed as the most vigorous enforcer of the Nation's antitrust laws in over a decade. Some scholars and businessmen did not agree with his interpretation of some antitrust statutes, particularly section 7 of the Clayton Act, but all conceded that he had brought new energy to the division and had acted in a decisive and forthright manner to curb anti-competitive elements in the economy. It was with regret tempered by the knowledge that he would make a splendid contribution to the Federal bench that we saw him leave the Department of Justice.

Recently, however, Judge McLaren has had occasion to return to Washington to discuss some of his actions as Assistant Attorney General. It was Judge McLaren who filed the three suits against ITT seeking the divestiture of Canteen Corp., Grinnell Corp. and Hartford Fire Insurance Co. It was also Judge McLaren who determined on the basis of the facts presented to him that a consent decree requiring the divestiture of numerous corporations and setting a 10-year restriction on the acquisition of additional companies while permitting ITT to retain Hartford was the best way to terminate these three cases from the viewpoint of all concerned.

Judge McLaren's testimony before the Judiciary Committee was most informative and straightforward. It set to rest any suggestion that pressure had caused him to terminate these cases by means of consent decrees rather than by completing the litigation. His statements also clearly demonstrated that there was no connection between the settlement of these cases and ITT's pledge to the San Diego Tourist and Convention Bureau as some have alleged.

Last Sunday Judge McLaren was the guest on the CBS-TV news program "Face the Nation." His remarks at that time add greater emphasis to his Judiciary Committee testimony.

Mr. President, I ask unanimous consent that the transcript of that CBS interview be printed in the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

FACE THE NATION

(As broadcast over CBS, March 19, 1972)

Guest: Judge Richard W. McLaren.

Reporters: George Herman, CBS News; Morton Mintz, the Washington Post; Neil Strawser, CBS News.

GEORGE HERMAN. Judge McLaren, as Assistant Attorney General, you wrote Mr. Kleindienst that the ripple effect of making IT&T get rid of the Hartford Insurance Company would shake the stock market and the entire national economy. Isn't that exactly the kind of company that should be broken up for the health of the nation?

JUDGE McLAREN. I think I said that it might—that there was a risk of an adverse effect on the economy, and I also said that if there was an alternative way of handling the thing, we should take that alternative, and we did devise an alternative that amounted to a billion dollars divestiture. And I don't think that that's ever really gotten across to the country, that this is the biggest divestiture in history.

ANNOUNCER. From CBS Washington, Face the Nation, a spontaneous and unrehearsed news interview with Federal Judge Richard McLaren, who was Chief of the Anti-Trust Division of the Justice Department during settlement negotiations with the International Telephone and Telegraph Company. Judge McLaren will be questioned by CBS News Correspondent Neil Strawser; Morton Mintz of the Washington Post, and CBS News Correspondent George Herman.

HERMAN. It may have been, as you say, Judge McLaren, the biggest divestiture in our history, but is it what you wanted? Did you not say afterwards that not getting the trial before the Supreme Court of your idea of anti-trust law, was your greatest disappointment in office?

JUDGE McLAREN. Well, I think that it was a disappointment not to have the Supreme Court confirm our theories of conglomerate merger, what was and what wasn't a violation, but I don't feel that my own personal desires can really stand in the way of eliminating a very lengthy litigation, taking away the possibility of immediate settlement, a result right now in other words, just because I want a Supreme Court ruling. And when we were able to get this very good, and I might say tough settlement, that I think has acted as a deterrent in this field—I couldn't justify taking perhaps two or three or four more years to take the matter to the Supreme Court.

MINTZ. Mr. McLaren, isn't the settlement that you accepted in mid-1971 almost identical to the settlement that ITT proposed in November of 1970 and that you turned down because you wanted to go to court?

JUDGE McLAREN. No. No, I think that what they offered in the latter part of 1970 was to divest the Canteen Company, which was one of the three lawsuits, one of the three companies that we were after, and I think that they also indicated that they might be willing to divest part of Grinnell. This was in no sense the kind of a settlement that I felt we needed. You see, the big issue was should they be entitled to keep the Hartford Insurance Company. This is the number six insurance company in size, and it's a billion and a half dollar firm, we'll say, I think a billion dollars of income. Owing to the way in which ITT acquired Hartford, it would have been a tremendous loss to their shareholders and to the company itself. I think it would have weakened the company itself if it had had to divest Hartford. On the other hand, we could achieve the same anti-trust objectives by having them divest other insurance-related firms. And I don't think maybe you understand the size of these companies that are going to be divested.

There are four firms, Avis Rent A Car, number two in its business, Levitt, which is about number one in community housing; there's the Grinnell Fire Protection outfit which is number one in its field; and there's Canteen, which is number one or number two in the field of vending machines. Now, to give you an idea of the magnitude of those, three of them are going to be in Fortune's 500 largest industrials. Now that is a very large divestiture, and the fourth one is about number 600 on the Fortune scale.

STRAWSER. Judge McLaren, some observers are still wondering what was suddenly so convincing about the financial hardship argument offered by ITT Board member Felix Rohatyn, when most aspects of that argument were really two years old, and had been rejected.

JUDGE McLAREN. No, I don't think that's a fair statement, Mr. Strawser, for this reason—repeatedly ITT had come in—in 1969 and 1970—and urged settlement, but they always urged it on the basis that I was wrong on our theories of

law, that we were going to lose the case. Later on they came in and they said, well, you shouldn't want any more than this, this would serve anti-trust purposes and so on, and in every case I turned them down. It was not until Rohatyn came in to see Kleindienst—and why he went to see Kleindienst instead of coming to see me, I don't know—but then is the first time they ever made a hardship argument, and I felt that when you're talking about the—I think ITT was number six industrial firm in the United States, I had to think very seriously whether my objective of divestiture and restoration of competition was going to do more damage to the country as a whole than a alternative divestiture system, which is the one that we worked out. And I don't think that it's come across either in the reporting of this thing that that settlement program that we did devise, which, incidentally, stops ITT from further acquisitions, was worked out by my staff. Four of us worked on it and I think—I figured up the other day we have between us a hundred years of anti-trust experience.

MINTZ. Well, Mr. McLaren, aren't you really proclaiming here, when you take into account the ripple effect, the effect on balance of payments and so on, a kind of doctrine of squatter's rights, that once a company gets big enough, the government can't force the anti-trust laws forcefully because what's good for ITT is good not only for the United States but for the whole western world?

Judge McLAREN. Well, I think it's an interesting idea, squatter's rights, but what I did here is exactly what I understand Senator Muskie has now proposed as a statute. He wants to make it a requirement that if a company over \$250 million of assets makes a significant acquisition, it has to spin off or split off an equivalent amount of assets. Well, that's substantially what I did here. And, incidentally, Mr. Mintz, I recall discussing this with you back in 1969, when I think the first time I did it was with the Atlantic-Richfield-Sinclair merger; we split off other properties and so on. We later did it in the Gould-Clevite merger, if you remember that one. And we did it in LTV. I don't think that there's anything strange about this, as a matter of fact, when we announced the settlement, the New York Times ran an article that said the day of the giant merger is over, and—

MINTZ. Is it really over? Isn't it really true that by not going to the Supreme Court you could have let that Grinnell case be decided and then use that as a pattern for settling the ITT cases, and you would have had the greatest possible deterrent to holding back the conglomerate merger wave? What you have now is that when the stock market gets ripe, that merger wave can resume. I believe this is correct but of course I may be wrong.

Judge McLAREN. I dare them to try it.

HERMAN. One thing that you said puzzles me a little bit, and perhaps I don't understand you fully. You said that one of the things that worried you was that divestiture that you were originally pressing would damage the stockholders of IT&T—

Judge McLAREN. Right.

HERMAN. . . . and that this was one of the reasons why. Now if that is a sort of rule of thumb or a rule of philosophy of the Justice Department anti-trust suit about any merger, doesn't that mean there will be no more anti-trust suits? Doesn't every anti-trust suit depress the company's stock?

Judge McLAREN. Oh, no, no, I don't think that that's a fair analysis—it's—

HERMAN. I'm not analyzing it, I'm trying to understand what you were saying.

Judge McLAREN. It's a very unusual thing to take into account a hardship remedy. In fact, the Supreme Court said in the DuPont-General Motors case that—the legal argument was made that this would hurt the stockholders and so on, and the Supreme Court said we can't take this into account, this is a matter where the basic thing is effect on competition. My point is if you can avoid a devastating effect on the stockholders of a company by an alternative remedy that does take care of all the anti-competitive consequences, I think you'd be derelict in your duty as a public servant not to take the alternative. There certainly is nothing punitive about one of these suits. We're not out to fine them a billion dollars, and when we found a way that we thought would eliminate all of the insurance-related aspects of this thing, through these other divestitures, well that's the route we took, and I still think it's a good settlement. I've challenged during the course of this thing various people to poll law professors, and I understand they have polled law professors, and out of seven, seven said it was a good settlement.

HERMAN. I've gotten somewhat the same results checking with some lawyers, and some friends. The thing that I'm interested in in the statement you just made is what seems to me the key word—all the competitive effects. Are you satisfied

that the settlement that you made with IT&T-Hartford does solve all the competitive problems, all of them that you were worried about?

Judge McLAREN. That's an awfully hard question to answer. I think it does, yes. In other words, there comes a time where you take away from the acquiring company, in this case ITT, various operations that it had at the time it made its big acquisition that you're challenging. If it didn't own Avis, if it didn't own Levitt at the time of the Hartford acquisition, we probably never would have sued them—you follow me?

STRAWSER. Judge McLaren, does it disturb you in this case to find that the outside financial consultant that you employed, Richard Ramsden, billed the government for only two days of work in a multibillion-dollar case—billed it for 242 dollars, I believe?

Judge McLAREN. Well, I think it was three days; but nonetheless, I believe the Treasury people indicated they worked a week on it. This isn't a terribly hard thing to analyze for an expert in his field, as I understand it, and I brought in an expert on it because I thought that a financial expert could do it more efficiently, and so on. I feel somewhat competent myself to analyze things like that. I spent four years, many years ago, in an—with a Wall Street firm, and did securities work and so on. I don't think I'm a complete ignoramus in the thing. And basically, I finally had to rely on my own feeling on what was best for the government in this case. And that was the basis of the settlement.

STRAWSER. Do you think you should've checked a little more closely on Ramsden's possible conflicts of interest, now that it turns out that he did not file a report with the government, apparently, on them?

Judge McLAREN. Well, I—I really don't have too many facts on that. I understand that he had the necessary report or statement of his interests, and so on, on file at the Commerce Department. You see, the first time I used Ramsden was in the LTV case. We had a similar analysis problem there. At that time he was a White House fellow—he was working for the government. And as far as I knew, when we referred this matter to him, asked him to make a whole study on ITT, he was still with the government. So, in retrospect, and as a matter of fact since that time, we have taken on an additional man at the department, a man who's a professor in this more financial area, and I think I probably would've—if we'd had him then—I'd have used him too, for another cross view.

MINTZ. Mr. McLaren, I'll preface this by saying that your claim that the—that the settlement was highly regarded has a lot of bipartisan support; if that hasn't come out, it is true. But let me get on to something else which I think is terribly important about the whole picture. Let's see if this is accurate. A corporation so big that it could be called a private government, so wealthy it can easily grant or deny large sums to politicians and political parties, is able to discuss and negotiate crucial antitrust matters in secret with an aide to the President, cabinet members and key figures on Capitol Hill. Between stints as the President's campaign manager, the Attorney General runs the Justice Department, where he controls the antitrust division. My question is, doesn't a setup like this create potential for abuse? Shouldn't antitrust be insulated from political pressures? And if you agree that it should, how would you do it?

Judge McLAREN. I think that's a kind of a 64-dollar question, Mr. Mintz. I don't know the answer to it. My experience, as you know, was in private practice of law in the antitrust field up until 1969. When I came into the government, I had known of, oh, political rumors and some sensational things in the newspapers. And I talked to Mr. Mitchell about it before I ever accepted this appointment as Assistant Attorney General, and we had a firm understanding, which he lived up to, incidentally, and so did Kleindienst—that we were going to decide antitrust matters on the merits, and that there wasn't going to be any political consideration in the—in our decisions.

Now you say, how do you—how do you enforce that, and I'm at a loss to know how better you enforce it than in many other areas of government, and that is that you simply get good people and you rely on their honesty and integrity. Incidentally, I feel very, very badly about the way many of the newspapers and—and television reporters, and so on, are saying that we abandoned the prosecution in this case. One writer even went so far, in a sarcastic way, as to say that we quashed the indictments. I think that the public is getting a terribly misleading picture of what happened here, and I agree that this can destroy faith in government. But worse than that, it's going to destroy the ability of any administration to get good professional people to come down here and—and take these technical and professional jobs, if they're going to be pilloried in the press.

HERMAN. Aren't you getting into a little bit of a semantic quibble there? Didn't you ask for a delay and then not pursue it? Isn't that dropping it or abandoning it, or something of the sort? I just—

Judge McLAREN. No, no—look—

HERMAN. I think you're—you're blaming semantics here, on—on reporters.

Judge McLAREN. Oh, no, that isn't fair—it isn't a matter of semantics. This morning's paper, one of them, said that we halted the prosecution. Well, that's—as Dean Griswold said when he testified, that's like saying the prosecutor is guilty of halting prosecution when the defendant comes in and pleads guilty. We got decrees, judgments, in all three of these cases. We didn't halt the prosecution. They caved in, in effect. And I think that we got probably a remedy that's one of the best accomplishments of the antitrust division in the last ten years. It's—

HERMAN. What had they done—what had they offered—when you first asked for a delay before the Supreme Court?

Judge McLAREN. Well, the delay really didn't have anything to do with it. We're talking about two different things, and I don't know whether I can explain it quickly. Mr. Walsh, who was an attorney for ITT, came in with a letter toward the end of our filing time in the Grinnell case. You see—

HERMAN. Is that the letter in which he said IT&T might well lose?

Judge McLAREN. Right. Now we had lost the Grinnell case in the lower courts, and we had bad findings against us by the trial judge—finding of fact, we had also lost the Canteen case, incidentally, before we settled this thing, and I don't think that's generally known. We had also lost the Hartford case on preliminary injunction. I don't think that's generally known. So that was the—status in which we were negotiating. But when Mr. Walsh came in with his letter requesting a delay, he named—or, I don't know—the Secretary of Commerce, council of Economic Advisers, Secretary of the Treasury, and he indicated in his letter that they all had ideas different from mine on the overall conglomerate merger picture, and they wanted us to delay filing our brief to give those other agencies a chance to have a say in our brief.

Well, I wasn't averse to doing that. After all, I'm part of an administration, and if the administration has different views on this, I don't think I'm God. I'm perfectly willing to—to handle it on the basis of an administration matter. And all we did was to delay filing that brief, which didn't make any difference whatsoever in the taking up of the case, because it couldn't have been—oh, I think we filed—delayed from April till May. Well the thing couldn't come up till October in any event—the next term of court.

STRAWSER. Judge McLaren, you testified repeatedly that you were not improperly influenced in this case. But do you perhaps feel you've been caught in the middle—with all that's gone on around you—the evidence of the paper-shredding in ITT's Washington office, the evidence of the intensive lobbying by ITT against the antitrust policy, the Dita Beard alleged memorandum and all that sort of thing?

Judge McLAREN. Well, I hold no brief for ITT, and I think if—I don't like to second guess another lawyer, but I am confident that it would not have been my decision to shred those papers if I were consulted. But I don't know what their circumstances were, and I—I don't—I don't particularly want to comment on it. I think I indicated before, I don't see why ITT didn't come to me in the first place instead of sending Rohatyn to see Kleindienst. My door was always open when I was head of the antitrust division. I said it about twice a week in speeches, and we would give people advisory comments on proposed courses of action.

HERMAN. Since you've said what you would or would not do in another—you've opened a door, as the lawyers say, since you've said you might or might not do something. Had you been in Mr. Kleindienst's office, in his shoes so to speak, would you have held several meetings with Mr. Rohatyn without bothering to tell—as I think Mr. Kleindienst testified—without bothering to tell Mr. McLaren?

Judge McLAREN. Well, I'm glad you raised that. I was very interested to read all the people that Geneen had gone to see in this administration; and you know, not one of those people ever said a word to me about that? I think that's quite a—compliment to this administration that those people did not put pressure on me. Of course, there are people in the other party too. I noticed—

HERMAN. But Mr. Rohatyn had gone—

Judge McLAREN.—that a lot of Democratic senators were on Geneen's list.

HERMAN. Mr. Rohatyn had gone to see Mr. Kleindienst to talk about the case which you were working on, and Mr. Kleindienst didn't bother to mention it to

you, as I believe he testified, for a couple of meetings before he finally did. Would you have operated in that—?

Judge McLAREN. No, I think you're wrong. I think that what happened was, Rohatyn came in one day and said, here is the kind of a pitch we want to make to McLaren—will you see if you can get us a meeting with him? Why didn't he ask that, I don't know. But Klenidienst—it was a short meeting, according to what Kleindienst had said—and he did ask me, and I said sure, I'll hear them. And a week or ten days later, they brought in Professor Saulnier and other experts and so on. We had a big meeting in my office, and Kleindienst sat over to the side. It was my meeting, and I said what we were going to do after that, and Kleindienst really didn't have anything to do with it after that. I would like to say something also about this word secret meetings. You know—

HERMAN. And which—a word I did not use.

Judge McLAREN. Well, it's all over the papers, and it's another thing that I kind of object to. Every time you see somebody privately, is that a secret meeting in the sense of a clandestine, improper thing? That's the thing that's getting across to the people, and I don't think it's fair.

HERMAN. I don't know, sir, I'm not prepared to try the newspapers here. Let me ask you one other—

Judge McLAREN. I shouldn't either, and I apologize.

HERMAN. Let me ask you one other in-their-shoes question. Do you think it was right and proper and also wise for IT&T to make this large pledge to an organization connected with the Republican Party while it was engaged in this litigation or these negotiations?

Judge McLAREN. I just have no way of commenting on that. I knew nothing about it. It never came to my attention, even where the convention was going to be, until long after our negotiations. I never met Mrs. Beard, I never had anything to do with that. According to their story, as I understand it, for the big hotels to make contributions, particularly on a big opening, as I understand that Sheraton's going to have out there, that's a pretty customary thing.

HERMAN. But by five times customary. They are the second largest chain, they gave five times as much, I understand, as the first largest chain.

Judge McLAREN. Well, they've got three hotels—I don't—I can't argue that—I knew nothing about it at the time, and I guarantee you that that Republican convention site and ITT's contribution had absolutely 100 percent nothing to do with this settlement that I made.

STRAWSER. If, as Mrs. Beard claims, that memorandum that did link the two was a forgery all along, do you feel that it was unnecessary for you to sit through all those days of hearings in the Senate?

Judge McLAREN. I don't—I—Mr. Strawser, it's completely inexplicable to me. Based on my knowledge of the events, what I said before was that the memorandum is absolutely incredible. Now whether it's spurious, a forgery, or just name-dropping, I just don't have any idea.

STRAWSER. Does it seem a little late for this charge to come out?

Judge McLAREN. I don't know. I just don't have any comment at all. I don't understand it, it never had anything to do with me, and I wish, I assure you, it had never come up.

MINTZ. Mr. McLaren, I'd like to ask you a question about consent decrees which was the legal instrument used in the ITT case, which was used long before you took office, and in Democratic administrations as well as Republican. As a matter of fact, it's been used in about 80 per cent of all anti-trust settlements which are conducted, as you prefer, in private—

Judge McLAREN. Right.

MINTZ.—and they exclude the economists, they exclude the competitors, they exclude the stockholders. What I want to ask is I'll use a specific example—the Justice Department sued the auto industry for conspiring for many years to suppress the installation and development of pollution controls, for conspiring, to put it in plain language, to poison the air. The industry escaped criminal prosecution by signing a piece of paper promising to never do in the future what it denied having done in the past. Now, how can a human being, who could be accused of poisoning the air, the water, or a person, sign a piece of paper and get off, and how can that human being be led to understand that we have equal justice under law?

Judge McLAREN. You know that's a stop-beating-your-wife question. They didn't escape prosecution by signing a piece of paper. They were investigated by a grand jury under the prior administration.

When I came in there was pending a civil case against them. Now the only thing I can get out of that civil case is a consent—is a court order, which requires them to cease and desist from this conspiracy, which requires them to start competing with one another instead of being cozy about this business of eliminating pollution. Well, I negotiated with them, and in '69 in a matter of a few months I got that decree. Now that's all I could have gotten by trying the case for five years, and I got it right then—

MINTZ. I'm talking about process.

Judge McLAREN. Well, what more could you ask of the process than a decree that puts them under the requirements of contempt of court to compete on this?

MINTZ. A human being can suffer in a way that a corporation, which is a legal paper of figment, cannot. Now publicity is one of the things that a corporation can be made to feel that's done wrong. When you settled or when anybody settles—it's not personal—that is denied.

Judge McLAREN. Are you saying that publicity was more important than our getting that immediate remedy? You know—

HERMAN. We have about 20 seconds if you want to finish that thought.

Judge McLAREN. Well, I think that immediate relief where we would get to work fighting pollution was much more important than that publicity-punishment kind of thing because there were private suits brought against them anyway.

HERMAN. On that point I have to break you off. Thank you very much for being with us today on Face the Nation.

Senator HRUSKA. Mr. Chairman, may I make this inquiry, regarding the question of the Senator from California, that he may bring up anything he chooses in the executive committee meeting, that is not—

The CHAIRMAN. He has that right.

Senator HRUSKA. It is not a warranty—I recognize his right to do that—that is not a warranty, however, that such matters will be considered as germane; rather, they are matters which will be considered by the committee and decision made as to their relevance and as to their germaneness and whether we will consider them in hearings; is that correct?

The CHAIRMAN. Now, you will have to make up your own mind.

Senator HRUSKA. I just wanted to know.

The CHAIRMAN. He has the right to bring up anything he wants to; that is all I am passing on.

Senator HRUSKA. Let me ask it this way, then: Has the committee the right to make the decision as to whether they are germane and whether the committee should consider them further?

The CHAIRMAN. Of course, the committee can do that.

Senator HRUSKA. Thank you. Those are all the questions I have at this time.

Senator ERVIN. Mr. Chairman, I have been on the Senate floor since the 18th of January until the present moment except for a couple of days, and next week I am going to fudge a little bit and take off an extra day, and I don't know whether I can be here Wednesday. I would rather have the meeting on Thursday as far as I am concerned. I have not firmly determined that I will play truant 1 day but I think I am justified.

I would like to ask one question. Why were these documents shredded and thrown in the wastepaper basket?

Mr. AIBEL. Senator, may I answer that question?

Senator ERVIN. Yes; anybody.

Mr. AIBEL. As was reported in the initial report which was read into the record about a week ago, there was a decision made to review the files to see what was missing and, at the same time, the general instruction was to comply with the policy on retention of records

which had generally been in force in the company for about 10 years but which had never been fulfilled in the Washington office; and so materials which were old and useless and some which were considered to be potentially embarrassing, if stolen from the files and misused, misconstrued by someone such as Mr. Anderson, were destroyed.

Senator ERVIN. Well, I have to confess that I often pray that the recording angel will drop a tear and blot out some of my mistakes, but I didn't know corporations were accustomed to doing that.

Mr. AIBEL. I should have qualified my prior statement by saying that was a decision made in our Washington office. Mr. Senator, while a corporation may be an incorporeal body, it is made up of human beings, just as you and me, who make it operate and many of these individuals have personal relations which are near and dear to them. I am aware from reading a press transcript of Mrs. Beard's testimony that among the documents that she threw away were personal letters that she had gotten from many Members of the Senate and of the House, which, perhaps, were thank you notes or had other terms of endearment in them which she decided could be misconstrued.

Senator ERVIN. Well, I have always heard it said, do right and fear no man and don't write and fear no woman, so I can understand why this was done.

The CHAIRMAN. I haven't read the transcript of Mrs. Beard's testimony. I understand she said something about ITT withholding her bonus?

Mr. GENEEN. Senator, we have not withheld her bonus nor taken really any action on it, No. 1. The awarding of bonuses is the action of our compensation committee which is made up of outside directors, and I think the thought they had was they would like to see all of the facts put before them before they made their final decision and I think that is a wise thing to do. I think I earlier said in my testimony that I didn't think it was fair to prejudge anything and I am sure that the compensation committee will treat this matter very thoroughly.

Senator HRUSKA. Mr. Chairman, may I ask about Senator Ervin's request for the holding of the meeting?

The CHAIRMAN. Well, it is all right with me to meet on Thursday.

Senator KENNEDY. I certainly have no objection. I would think we can go ahead on Wednesday. We have scheduled hearings on Wednesday and we ought to go ahead and have an executive meeting on Thursday.

The CHAIRMAN. I will take that under advisement.

Senator HRUSKA. What is under advisement, Mr. Chairman, the going ahead on Wednesday or the meeting on Thursday—the executive meeting?

The CHAIRMAN. The hearing Wednesday.

Senator HRUSKA. The hearing Wednesday, but is it understood we will have an executive meeting on Thursday?

The CHAIRMAN. Yes, sir.

Senator HART. Good morning, Mr. Geneen. There is nothing worse than to walk in and ask a question that has been asked four or five times and if I am doing that, I apologize.

Mr. GENEEN. Okay.

Senator HART. I will read the transcript.

One of the nagging questions, I suppose, entertained by both friends and foes, depending on which way you look at it, is why ITT kept its pledge to the San Diego convention organization a secret.

Mr. GENEEN. I don't think, Senator, when we send an open telegram to the Convention Bureau out there that that is exactly a secret.

Senator HART. When would it have been, when was that sent?

Mr. GENEEN. That was sent before the site selection was made, and it was on about the 19th or 20th, on July 21, before they made their selection, and that was our way of recording our exact obligation.

Senator HART. July 21?

Mr. GENEEN. July 21.

Senator HART. Long before that, though, weren't there current in the press reports of any anonymous donor having come up with some kind of pledge?

Mr. GENEEN. Well, if there were reports of an anonymous donor, they were somebody else's way of expressing it. I think I covered in my statement and again in questions the fact that we did have a discussion—this way May 12—with, I think it was, Congressman Wilson, in which we expressed enthusiasm for the idea. We have hotels, including a new one there, and I think we talked in some general figures at that time but I think I also said this was a speculative idea. There was no assurance that it would take place and no one, at least I did not think of it other than as a pledge to support it when it came along, and I did not consider any figures that might have been talked about which included the use of rooms and trade rather than cash, primarily, as any kind of a commitment.

When it came to the point that they were going to go to the site selection committee and they asked us for an expression of our commitment, we sent a telegram and the telegram very clearly was signed by Sheraton—I think it has been submitted to the committee—and specifically spelled out exactly what the commitment was, what their cocommitment was in the sense of presidential headquarters being in our new hotel, and we had a contingent liability to cover another \$100,000 if matched and if needed.

Senator HART. I do have your notes now. It is correct that on July 21, signed by ITT, by Sheraton, a telegram——

Mr. GENEEN. That is the—excuse me.

Senator HART (continuing). Was sent.

Well, the thing that triggered my question is that—and I say this without knowing it is a fact—I have been advised that an announcement was made on June 4 by Congressman Wilson that a pledge of several hundred thousand dollars had been made to underwrite the convention but the identity of the pledgor was not given. So I guess my basic question, then, should be rephrased. On or about June 4, ITT made a pledge but there was no disclosure of its action until the telegram of July 21; knowing that the antitrust negotiations then were current, was there a feeling on the part of ITT or the Justice Department or Congressman Wilson that this coincidence would be interpreted in a way as to embarrass everybody? It is a harsh way to put it, but it is the question that the public asks and I ask it.

Mr. GENEEN. Senator, your question is a little long. Let me try to go back there.

Senator HART. It is long but it is simple.

Mr. GENEEN. All right.

Senator Hart. Why the silence for 6 weeks during which there was a pledge and the pendency of the negotiations?

Mr. GENEEN. No. 1, Senator, we did not in my mind have any pledge to anybody, and if people made announcements about anonymous donors, I would not be able to identify ITT as the so-called anonymous donor.

I can also say that there were reports around that I personally gave \$400,000, something of that sort. Can I say only that we were aware that we had undertaken to support it. We had some general conversations which were not, in my opinion, in the form of a binding pledge of any kind, and when we finally came to the point of what we needed for their site meeting, this would be the delegation, where it would be from the San Diego town, we put our, you might say, commitment in very clear language in the telegram. I appreciate there has been a lot of talk and that has been part of the problem. That was the first part of your question.

The second part of the question was, in my mind, there was absolutely—and I have stated this before—no connection in our mind or anybody else's mind, or did anybody that I can recall mention it, between anything we did out there which was a basic business decision and anything to do with the Department of Justice.

I would like to add something, Senator, that might help you a little bit. I talked to Mr. James just yesterday who just came back from Europe, and he is president of our Sheraton chain, and I asked him to make—to give me his analysis of what he hoped to gain—and this comes back to some questions I received from Senator Tunney, too—from his participation, as he had been in this program, and he expected to earn, I thought it would be higher but he said no, he would earn about \$40,000 additional over and above what he would normally earn in the 5 days of the convention. He figured to earn about \$125,000 but by the end of the year, over and above what he would normally gain, and his key point, as he put it, was that bringing a national convention of this kind to San Diego would put San Diego on what he called the national convention circuit, namely, this is normally Los Angeles, Chicago, Miami, Washington, New York, and he felt that this would be a very important factor for San Diego in the off season because they could now bid for the American Bar Association and the American Medical Association and this type of convention and this was the key areas he sought, and he threw out as a comparison—which I think I have to correct the record on because I said a lower figure before—that on the Waikiki Hotel which they had opened in July of last year they had spend \$400,000—I said \$250,000—and as a result of that he said they were running at 85-percent capacity and were booked solid for 3 years ahead. Now, my only reason for bringing all that detail in there is to make it clear, Senator, this is, in their way of doing business, is a very logical thing for them to do and it is a business approach.

Senator HART. When I came in, a prepared statement signed by Mr. Aibel on the subject of "Further Investigation of Document Destruction" was given to me.

Mr. Aibel, one of the concluding points in your statement points out the time when Mrs. Beard first was shown by Mr. Hume the memorandum of June 25—that being on February 23; that you

reviewed the files on the 24th; the first Anderson column was published on the 29th; and this Judiciary Committee on March 1 reopened its hearings on Mr. Kleindienst. You say then:

In view of the fact that the file review by the staff of the Washington office occurred about a week prior to the Judiciary Committee's decision to reopen its hearings and at a time when Mr. Kleindienst's name had not even been mentioned in connection with the alleged Beard memorandum, it is self-evident that those in the Washington office who conducted the file review had no reason to anticipate an investigation by the Senate Judiciary Committee or any other governmental agency nor were they aware of any outstanding official request for production of documents from the files of the Washington office.

Can you state affirmatively that no one in ITT mentioned the possibility of either a judicial or a congressional inquiry or adverted to such a possibility prior to the destruction of those documents?

Mr. AIBEL. On the basis of the information I have, I can state affirmatively that such was the case.

Senator HART. I would not expect a lawyer to answer the question any other way. What you are saying is you don't know of anybody who said that but you can't say that nobody said it; is that right?

Mr. AIBEL. From my account of what was said at the meeting prior to the start of the file review, and there was no reference, as the account was given to me, of any of the items which you specifically asked me about, and that was the basis upon which I stated affirmatively my reasons.

Senator HART. Lastly, Mr. Chairman, in this soame memorandum, reference is made to the request for information on any document destruction undertaken by consultants to your Washington office and you replied to that by saying that you made inquiries of the three consulting firms retained by ITT, and in all cases they said that the alleged Beard memorandum had never been seen prior to its release by Mr. Anderson, no documents originating with ITT or relating to ITT which, in any way, linked Sheraton's commitment to the San Diego Tourist Bureau to the settlement of the antitrust cases were destroyed, and never in fact had anyone on the firm seen any such document.

My basic request—I hope my request was clear, but let me state it now: Did any of these consultants engage in any document shredding at or about the time ITT's Washington office shredded—and when I said shredding, I shouldn't limit it just to that machine—did they destroy documents, let me put it that way?

Mr. AIBEL. Senator, it is very difficult for me to answer your question. We all have wastebaskets beside our desks and I don't think our inquiries went to the question of whether there were no documents thrown into wastebaskets at any time during this period. We did limit our questions to the general area of this inquiry with the thought that this was the area of inquiry of the committee and that you weren't engaging in a general fishing expedition nor did we think it appropriate to invade the privacy of these firms who could very well answer for themselves as they saw appropriate. But the specific inquiries they were prepared to respond to in light of the particular interest which you have shown and which the committee has in the existence of documents on the subject.

Senator HART. Fair enough. You shouldn't ask a question that is so broad as to involve the normal disposition of junk mail, preliminary memorandums and so on. I am not asking about that. I accept that in

the routine of an office operation there will be many documents disposed of; but what I am trying to find out is whether or not in the routine operations a decision was taken by any of those consultants, in light of the ITT antitrust—San Diego controversy, to dispose of documents which, in the judgment of any of those concerned, might bear upon either or both of those events or activities—antitrust and San Diego—whether reflecting an attitude on the part of an ITT consultant himself, or memorandums reflecting any conversations he might have had about the executive branch—that is what I am trying to find out.

Mr. AIBEL. I know of no such action being taken.

Senator HART. I now am shown the question that I addressed to you and which you have undertaken to reply to in the memorandum. It is for "A report on whether files of individuals not direct employees of ITT but at one time or another consultants to ITT had been reviewed and any items shredded."

I think you would know precisely the general area of the documents and memorandums that would be of concern to us which would have been in the files of your consultants. Were any such memorandums or files disposed of at or about the time the ITT Washington office undertook the file review and destruction?

Mr. AIBEL. Senator, I don't know of the contents of the files of these consultants. I have no information which leads me to think any documents were destroyed in the context of your question.

Senator HART. When we were in Denver, Mrs. Beard expressed her frustration, I guess it was, that when that memorandum of June 25, first turned up, no one of the ITT personnel, either in Washington or New York, that she spoke to, believed her when she said she had not written it. Everybody she talked to believed she had written it. Why do you suppose everybody thought she had written it?

Mr. AIBEL. Senator, may I answer that? I didn't speak to Mrs. Beard so I don't know what she said, but after hearing her, of her testimony, I reviewed my own recollection of what others had said and talked to them again and I don't know of any overt basis for her belief. No one told me about—

Senator HART. Run through that again. Are you saying she is not telling us the truth or—

Mr. AIBEL. No; I just don't know of anybody who said to her, "We think you wrote the memorandum." And so I don't know what the basis for her belief is. It may have been expressed; it may have been other things, but there was no one who said to her, as I have been able to find out, "Look, now, you wrote the memorandum; didn't you?" or "I don't believe you in your denials."

Senator HART. As I recall it, and Senator Cook and Senator Tunney could help us, she told us that she had talked to Mr. Gerrity; she talked to Mr. Merriam, among others. I will leave that hang. I can't remember any beyond those two. She was very explicit with us that they did not believe her when she said she had not written it.

When did you first become aware of the memorandum, Mr. Aibel?

Mr. AIBEL. It was on February 28, when I returned to the office after a stay in New York.

Senator HART. Did it appear to you to have been written in the ordinary course of business?

Mr. AIBEL. I did not actually see the memorandum until it was published in the Anderson column; in fact, it was not published in the Anderson column. I didn't see the memorandum until it was published in another newspaper. When I read it, it seemed to be a very unusual document.

Senator HART. Did you believe she wrote it?

Mr. AIBEL. By that time I had received various reports from people who had spoken to Mrs. Beard and I had suspended belief; I didn't know whether it actually had been written by her or by anybody in ITT or just what the origin of it was. I said I will have to find out what the facts were.

Senator TUNNEY. Mr. Chairman, just on the point you made, on page 14 of the transcript of the proceedings in Denver, Mrs. Beard stated:

On Monday, February 28, I was instructed by Mr. Gerrity to come to New York. I spent part of Tuesday and Wednesday, February 29 and March 1 in New York. I told Mr. Gerrity and others that I could not explain the Anderson memorandum, in spite of Mr. Gerrity's assertions that I had written it. It was my impression that they did not believe me. I knew it was not my memo but I had no way to prove it without assistance which had to come from ITT and which was not tendered at that time.

I asked time and time again to talk to Mr. Geneen, but was prevented from doing so.

Senator HART. Do we have a list of people she did talk to at ITT?

Senator COOK. I think it is simpler to ask Mr. Aibel: Did she talk to you?

Mr. AIBEL. No.

Senator COOK. Then you have no knowledge as to any of these questions nor the respective answers to them; that is the simple way to approach it.

Senator HART. Did you talk to anybody who had talked to her about this memorandum?

Mr. AIBEL. Yes; I have.

Senator HART. Did any of them tell you that what Mrs. Beard told us in Denver was correct or not, namely, that they believed she had written it?

Mr. AIBEL. I think that somebody—

Senator HART. Did you get into that?

Mr. AIBEL. Perhaps not anyone I had actually talked to speculated that perhaps she had. I would guess that Mrs. Beard's expression in Denver was perhaps based upon tough cross-questioning which anybody who is talking to somebody in Mrs. Beard's situation might put to her, such as, "Now, come on, you really can't expect us to believe that you didn't write this," just to see whether or not she might give the kind of response. But I am speculating here. I know she did speak to our outside counsel and I don't think that anybody told her that they believed she had written the memorandum.

Senator HART. You are speculating on something else, too, that that was tough questioning in Denver of Mrs. Beard. I think that would not characterize the type of questioning that went on in Denver.

Senator COOK. Well, may I say, Mr. Chairman, that I would have to agree with the chairman completely and thoroughly; but the speculation that has already been going on certainly shouldn't heap too much abuse on Mr. Aibel, because we have been going on speculating for 12 straight days.

Now, if anybody talked to Mrs. Beard, let's find out who talked directly to Mrs. Beard. If you want them here, we at least are going through Thursday and conceivably longer. If you want them here, get them here; but to ask a question "Did somebody tell you who had talked to Mrs. Beard and Mrs. Beard told them and then they told you," is the rankest kind of hearsay.

Senator HART. We are going to get two here, at least two, to whom she talked, because they are on the witness list in the Washington office.

Senator Cook. Fine. Under the circumstances, Mr. Aibel had not talked to Mrs. Beard, that ends that particular approach it would seem.

Senator HART. So you will understand, perhaps, more clearly my reason for asking, and I hope that all who did talk to her in ITT will tell us, this is the statement she gave us in Denver: "Did you tell them"—meaning ITT officials—"or any of them what you are now telling us?" Namely, she was dismayed that no one would believe her; she tried to explain.

Mrs. Beard. I tried to, and they said, "Well, you know, this isn't it, but what we have to do is figure out what you meant by this," and we would get down to these crazy sentences, and I said, "They don't even hang together. They don't mean anything. I don't even know what they are supposed to be indicating."

And yet she went on; no one would believe her. They said she had not written it and we will find out why it seemed a believable document at the time she was protesting that it wasn't. That is really our hangup here.

Senator Cook?

Senator Cook. I have no questions.

Senator HART. Senator Tunney?

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Geneen, when did you hire Dr. Walter McCrone and Mrs. Pearl Tytell to do an analysis of the Anderson-Beard memorandum?

Mr. GENEEN. Senator, that was turned over to the legal department. I didn't have anything to do with it. If you want an answer, it would be better to ask counsel.

Senator TUNNEY. Can I ask counsel?

Mr. GENEEN. Sure.

Senator TUNNEY. When did you hire those two individuals?

Mr. GILBERT. Are you talking to me, Mr. Tunney?

Senator TUNNEY. Yes.

Mr. GILBERT. I don't know when the outside experts were employed. I had nothing to do with it myself.

Senator TUNNEY. Does anyone know who had something to do with it?

Mr. GILBERT. Yes; yes. The law firm of Skadden, Arps certainly talked to them. I have no knowledge at all as to when they were hired.

Senator TUNNEY. Were they given any instructions?

Mr. GILBERT. In what respect, Senator?

Senator TUNNEY. Well, instructions as to the analysis, of course.

Mr. GILBERT. I am sure they were given instructions as to what they were examining.

Senator TUNNEY. Well, who instructed them?

Mr. AIBEL. Senator, this was basically a piece of work that was under the supervision of my organization by a lawyer named DeForrest Billyou.

Senator TUNNEY. What did Mr. Billyou—is that how you pronounce it?

Mr. AIBEL. Yes, sir.

Mr. GILBERT. That's right.

Senator TUNNEY. What did Mr. Billyou tell them to do?

Mr. AIBEL. Senator, I can only respond generally that he asked them, first, Mr. and Mrs. Tytell and then Dr. McCrone, to examine into the question as to whether the document had been typed in our office and to determine if they could when it had been typed.

Senator TUNNEY. When was that?

Mr. AIBEL. I am sorry; I can only estimate that it was approximately 3 weeks, 2½ or 3 weeks ago. I can supply the precise date later.

Senator TUNNEY. And do you know for how long a period of time they had the document available to them?

Mr. AIBEL. Senator, I do not.

Senator TUNNEY. Could you get that information for us, too?

Mr. AIBEL. Yes; I can.

The CHAIRMAN. What is this document?

Senator TUNNEY. This is the document, the alleged Beard memorandum that was presented to the committee by Mr. Anderson, which Mr. McCrone and Mrs. Tytell said was typed around January 1972, and which the FBI indicates, as far as they can tell, was typed around June 1971.

The CHAIRMAN. Well, now, I want the record to show this; I gave those documents to Dave Bowers of the FBI. That was the third time they were sent down there. The first time they were sent on the 10th of March; the second time around the 16th of March. They were transmitted those two times through the Justice Department, which is the normal procedure to get to the FBI. There was some question about the Justice Department people handling the documents so I sent Mr. Bowers of the FBI. I was again approached—I don't remember by whom—that ITT had employed two scientists to look at those documents. My instructions were that that was a decision the FBI should make, but under no conditions were they to leave the control of the FBI.

Now, I further stated that, after all, these were stolen documents and the property of this company and they had, I thought that they had, a right under proper supervision to see those documents. In any court of law in this country they would certainly have had that right, and I thought it was nothing but fair that they do it, but yet I left it, it was the decision that the Bureau had to make.

Senator TUNNEY. Thank you, Mr. Chairman. I was just getting to a point that I was trying to figure out when the analysis was done, over what period of time—

The CHAIRMAN. Now, look, I think the record ought to show here also that we have not received a report from ITT; there have been references in the press, but we have received no report about their examination and whether they examined the documents or not. I do not know.

Mr. AIBEL. Mr. Chairman, that report was completed in New York; that is, the physical process of reproducing it, last night. It arrived in Washington after these hearings began so, therefore, I could not bring them with me. They will be available shortly.

Senator TUNNEY. They will be available shortly?

Mr. AIBEL. Yes, Senator.

The CHAIRMAN. I am going to take what the FBI said about it.

Senator TUNNEY. Mr. Aibel, it is reported, in the New York Times, that Mrs. Tytell apparently testified for Louis Wolfson, financier, and that she received \$78,000 for her services. How much did she receive for her services in this case?

Mr. AIBEL. I don't think she has gotten paid anything, and I don't know what the retainer arrangement with her is.

Senator TUNNEY. How much did Dr. Walter McCrone get?

Mr. AIBEL. I will have to give the same answer.

Senator TUNNEY. Would you make that information available to the committee?

Mr. AIBEL. Certainly, if it is available.

Senator TUNNEY. Are you going to be making available to the committee their analysis and report?

Mr. AIBEL. Excuse me, Senator——

Senator TUNNEY. Are you going to make the the report available to the committee? Are you or aren't you?

Mr. AIBEL. Yes.

Senator TUNNEY. Why can't you make available to us the amount you paid them?

Senator COOK. Maybe they haven't gotten a bill yet.

Mr. AIBEL. That is exactly the point. I don't know whether we have that.

Senator TUNNEY. Mr. Geneen, did you ever know that during the time that there were negotiations for the settlement of the ITT anti-trust suits that Mr. Flanigan hired Mr. Ramsden to do an outside financial report?

Mr. GENEEN. The first I knew about it was when it came out in testimony before the committee.

Senator TUNNEY. Did you know of Mr. Flanigan's relationship to Dillon, Read during the time that you were having conversations with him?

Mr. GENEEN. I think it was public knowledge that he had a relationship with Dillon, Read before he left there.

Senator TUNNEY. How much money was Dillon, Read paid by ITT to help negotiate the merger of ITT with Grinnell?

Mr. GENEEN. I don't have the figure in mind, but it was an entirely different partner that we dealt with. I can remember that.

Senator TUNNEY. Was it in excess of \$600,000?

Mr. GENEEN. Senator, I do not recall.

Senator TUNNEY. Do you know Mr. Ramsden?

Mr. GENEEN. No, I have never met him.

Senator TUNNEY. Have you ever seen this Mr. Ramsden?

Mr. GENEEN. No.

Senator TUNNEY. Did you ever know that Mr. Rasmden was writing the report?

Mr. GENEEN. No, I did not.

Senator TUNNEY. Did you know of the interagency antitrust policy committee on which Mr. Flanigan sat that was reviewing antitrust policy for the Government?

Mr. GENEEN. I knew they had an interagency committee; I am not sure who sat on it.

Senator TUNNEY. Did you know that Mr. Mitchell sat on it?

Mr. GENEEN. No, I did not.

Senator TUNNEY. Did you know Secretary of the Treasury Connally sat on it, or his representative?

Mr. GENEEN. I don't know. I had the impression it was supposed to be an interagency and I assume the Treasury had a representative.

Senator TUNNEY. Treasury, and the Council of Economic Advisers?

Mr. GENEEN. That I don't know. I don't know who was on it.

Senator TUNNEY. Well, Mr. Mitchell, in his testimony, answered a question of mine. I said, "Did those study group meetings in which Mr. McLaren and you participated, did Mr. Flanigan participate on a regular basis, too?"

Mr. MITCHELL. I would—I don't know about the ones that I did not attend. It may have been at other staff levels along with the Departments of Commerce, Treasury, Council of Economic Advisers, and so on. There were probably during that period of time somewhere between three and five of these meetings which were held at infrequent occasions because the work in between was done by staff and then the principals would meet to review it.

Senator TUNNEY. And Mr. Flanigan attended those meetings?

Mr. MITCHELL. He attended a number of them. I don't know whether he attended all of them.

Senator TUNNEY. Would you care to characterize the nature of the discussions in a little bit greater detail than you have those meetings?

Mr. MITCHELL. Well, with respect—

Senator TUNNEY. On antitrust matters.

Mr. MITCHELL. On antitrust matters?

Senator TUNNEY. Yes.

Mr. MITCHELL. The whole policy of the Government was reviewed when we came in, as I testified here a minute ago with respect to the establishment of original policy.

The he goes on.

Now, the reason I ask that question is that on the list of people that you indicated that you met with in 1970 and 1971, there are Mr. Connally, who is secretary of the Treasury, Mr. McCracken, Chairman of the Council of Economic Advisers; Mr. Flanigan, and Secretary Maurice Stans, all of whom were sitting on that interagency committee on antitrust policy, and I was just curious if you had met with them because you were trying to influence that policy with respect to the ITT cases?

Mr. GENEEN. Do you want me to answer it now, Senator?

Senator TUNNEY. Yes, please.

Mr. GENEEN. No. 1, Senator, I am not aware of what meetings or anything that went on in this committee, and my meeting with people that I selected was because I thought they had an interest in the economic outcome of the country and the balance of payments and we were not talking about cases; we were talking about policy. I think I covered that fairly heavily both Wednesday and Thursday of the last time we met.

Now, these are the people who are interested in that area. Whether the committee was working or not working, I was not aware. I wasn't even aware the committee existed at that point. I don't know whether it did exist or when it went out or what, but in any event my comments

were directly to these people and they made no reference to the committee to my knowledge.

Senator TUNNEY. They never made any reference to the committee?

Mr. GENEEN. No.

Senator TUNNEY. What are the rules of the road with respect to lobbying in the executive branch of Government while a case is in the process of litigation, do you know?

Mr. GENEEN. Well, if you are talking about cases, I have made the point consistently that I have been talking about the policy. I think, if you want me to go back through it——

Senator TUNNEY. No; I was just wondering.

Mr. GENEEN. No; No. I think, and I said it, that anybody who feels they have a problem related to the Government has a perfect right to raise questions about policy, and I thought the policy was a very poor policy and I think I went through the entire balance of payments and the domestic merger policy and these are the people who are interested in the economic policy and merger. When Mr. Peterson came into the scene he had concern for the international capabilities of the American economy and I think this was his concern, too.

I think if you will recall the action we asked Judge Walsh to take was to try to get a meeting of what we called an interagency committee. I don't know that it referred to any committee and in my mind at that time we asked for that because there apparently was no such review going on. My mind and my feeling was if they could put these facts together perhaps they could see some of the policy questions that we were raising apart from the, you might say, purely advocate procedure of trying to win a case.

Senator TUNNEY. Well, I am not suggesting that it is improper for a person to see high governmental officials if they have a problem with the Government. My question, really, goes to what you consider to be the rules of the road with regard to such activities, and as I understand your testimony you feel that the seeing of these individuals did not have a direct impact upon the settlement of the cases that you had with the Justice Department; there was going to be no direct impact of any kind?

Mr. GENEEN. Well, let me go back a bit and come back to your question.

As to the rules of the road, as you put it, my comments were cloaked properly in what the policy was and what it, in my opinion, the effect it would have in, you might say, the national interest.

If this indeed had any effect, I think it would be proper, if a better policy were pursued. As you recall, I said my feeling was that what was happening here was that we were about to attempt legislation which was equivalent of that which virtually demanded the full attention of Congress and to accomplish it in a way without going through the usual committees or other areas where these kinds of policies could be brought out.

Now, I think you might say the most direct point we got to was with Judge Walsh and we asked if we could with the Department of Justice ask them to set up a committee to review these policies or set up a meeting and if I recall, two parts of what I am told was said in the testimony here: No. 1, apparently nobody ever came in the delayed period when this might have come and, also, I noticed nobody was ever invited. Now, somebody has put forth the fact that this is a great

show, the fact that nobody interfered, which seems to be your point that I would look at it the other way; I wouldn't want to run a business that way.

Senator TUNNEY. I am not trying to make the point but trying to find out.

Mr. GENEEN. No; no. I am just trying to answer you questions, Senator.

Senator TUNNEY. So, in conclusion, then, you did not intend to put any pressure on Mr. McLaren when you met with those various officials—Mr. Connally, Mr. Stans, Mr. Mitchell, Mr. McCracken? You weren't in any way trying to put any indirect pressure on Mr. McLaren?

Mr. GENEEN. Let me define your word "pressure," Senator.

I was not asking him to settle our cases. As you recall, my feeling about our cases was very simple. If we were following the normal anti-trust law we were quite willing to go to any decision that came with it, but I did have a feeling it was being pursued on a new theory of bigness per se and this was a policy that I thought had bad, we might say, forward-looking implications for the U.S. local industry and international area, including the balance of payments; and my feeling is that when any of the logic that I put forward had any impact on them I thought it was perfectly proper.

Senator TUNNEY. So, as I understand what you are saying, it is that you were hoping that it would have the effect of changing the governmental policy, and if the governmental policy was then changed, that there would be a settlement of our suits?

Mr. GENEEN. No; I had the hope that it would have an impact on the governmental policy and my feeling was that if the governmental policy was more enlightened than I thought it was, yes, it would have an impact on our suits, because we had not been doing anything, in our mind, and the court decision, as it came out, you might say, conformed to anything in the anticompetitive area. But that was not the issue but the issue was, as I went through in quite detail, if you succeed in getting in effect a law based on stopping mergers that are not anticompetitive, you now have made a very sweeping change in the entire climate in which industry operates, and I think I cited the last time we were talking at least two areas from the Council of Economic Advisers where they themselves were pointing out this would be a very poor domestic policy and the implication for overseas were just the same.

I think at the same time we had two committee reports come out; one was the Neal report and the other was the Stigler report, both of which cautioned against the same kind of action and with all this flow of, you might say, contrary policy, it seemed like this was the only proper thing to do, was to raise this question and these questions in the national interest. I couldn't raise them in terms of our own suits.

Senator TUNNEY. Was Mr. McLaren, in your judgement, during that period of time, the single individual that you were having problems with on this policy?

Mr. GENEEN. Senator, that is a very hard problem to say. I can only say that he represented the Antitrust Division; he was in charge of the litigation against us. Our lawyers talked with him and we had the feeling that he had some very firm, dedicated views which were

particularly his own; whether they were shared in depth or not, I don't know. But in effect he was setting the policy and, I think, as I mentioned the last time we met, he made a number of statements that he was not pursuing bigness per se. I had been told that the policy of the administration was not against bigness per se but it persisted in coming through to us that this seemed to be the policy he was following, which had very broad economic implications, and our feeling was if you are going to have such a policy, and I think it was well stated in Judge Walsh's memorandum, that at least there should be the equivalent of a review of the economic factors involved. More properly in my mind it should have gone before the committees of Congress where there would have been such a review and then proceeded as orderly legislation when it was this sweeping impact.

Senator TUNNEY. Did you ever hear Mrs. Beard or anyone else in ITT refer to McLaren's views as Mickey Mouse?

Mr. GENEEN. No, I had not.

Senator HART. I am reminded the Senator's time has expired.

Senator Cook?

Senator HRUSKA. I reserve my time.

Senator Cook. Mr. Geneen, relative to the line of questioning from the Senator from California, and bearing in mind in 1970, I think, that the Congress of the United States overruled the Supreme Court of the United States in regard to what was commonly referred to as the Failing Newspaper Act, did you visit Senator Daniel Inouye of Hawaii, Senator Ervin of North Carolina, Senator Hart of Michigan, Senator Hartke of Indiana, Representative Celler, Representative Rodino, Representative Brooks, Representative Boggs, Senator Byrd, and Senator McClellan for the purpose of influencing them in relation to the cases that were then pending before the Justice Department which involved ITT?

Mr. GENEEN. I did not. I saw them; they are on the list that you have here.

Senator Cook. That is correct.

Mr. GENEEN. I saw them exactly on the same subject—the national interest policy and implications of what was taking place. I might add it sounds a little like—I felt like Paul Revere trying to wake people up to what had happened.

Senator HART. Some of us thought in that case that it was good the British were coming. [Laughter.]

Senator Kennedy?

Senator KENNEDY. In the—in your memorandum on the shredding, you have indicated, on page 2, that none of these individuals threw out or destroyed any documents relating the settlement of the anti-trust cases to the San Diego convention.

Now, were there any documents thrown out that talked about ITT and the San Diego convention, Mr. Aibel?

Mr. AIBEL. Senator, I was just trying to refresh my recollection by looking at the next sentences in the memorandum which say that the only documents relating to the San Diego convention that anyone in the Washington office could recall seeing were only those that were in Mrs. Beard's files and those consisted of brochures and tourist information of hotels operating in San Diego, and I subsequently testified that I thought those documents were not shredded but thrown in the wastebasket.

Senator KENNEDY. What was sensitive about those documents?

Mr. AIBEL. I don't know why Mrs. Beard threw them away. Perhaps they were useless at that point because she had determined that there were facilities that were adequate to have a convention of the scope of the Republican National Party convention in San Diego, but I am speculating once again. I don't know.

Senator KENNEDY. But in your review of this and your conversation with the people at the ITT office in Washington, there were no memoranda of ITT that related to the San Diego convention that were destroyed during that shredding period?

Mr. AIBEL. Senator, my information is there were none but I wish to correct something that you stated in your question. I did not speak to the 31 people who were interviewed by Mr. Martin personally. I spoke to some of them but I didn't speak to all of them.

Senator KENNEDY. Is Mr. Martin here? Can he answer that?

Mr. AIBEL. Mr. Martin is here.

Mr. MARTIN. I can't Senator, answer that specific question. The only thing that might have been—the report refers to the fact there were some memorandums relating to the need for pressrooms and the possibility of a hospitality suite and I think that was probably an internal memorandum about—

Senator KENNEDY. What date was that?

Mr. MARTIN. What was the date of the memorandum?

Senator KENNEDY. Yes.

Mr. MARTIN. I couldn't tell you and I don't—the person I had spoken to couldn't say this. This was Mrs. Beard's secretary who says she recalled something of a general nature such as that.

Senator KENNEDY. General nature such as what? I don't understand it.

Mr. MARTIN. As arrangements for pressrooms, you know, hospitality suite; those—that is what she told me; I am just reporting, Senator.

Senator KENNEDY. This is at the ITT Sheraton, pressrooms and that sort of thing at the ITT Sheraton?

Mr. MARTIN. I can't answer that. I tried to quote as best I could what was said.

Senator KENNEDY. Well, was the question asked of those who did this review by those who did the investigation that you have just submitted today? Was the question asked whether there were any materials that were destroyed related to ITT and the San Diego convention?

Mr. MARTIN. Yes, and the only one who recalled anything was Mrs. Beard's secretary who said to me just what I reported to you.

Senator KENNEDY. Was Mr. Merriam asked about that?

Mr. MARTIN. Yes, in discussions—

Senator KENNEDY. I mean did he indicate whether that memorandum that Mrs. Beard testified to under sworn oath in Colorado that she handed to him, whether that was destroyed?

Mr. MARTIN. He said, Senator, that he never saw that memorandum.

Senator KENNEDY. Well, Mrs. Beard swore this, that she gave it to him, handed it to him.

Mr. MARTIN. Senator, I wasn't there; I can't tell you what she said.

Senator KENNEDY. I am telling you.

Mr. MARTIN. I am sorry, sir; I don't mean to argue with you, but just trying to explain this. I don't know. I asked if he had ever seen that.

Senator KENNEDY. You want us to——

Mr. MARTIN. And he said that he—maybe we are getting into confusion. I am sorry. I am talking about the Beard memorandum that was produced by Mr. Hume.

Senator KENNEDY. OK.

Mr. MARTIN. He said that he had never seen that document.

Senator KENNEDY. Had never seen the Beard memorandum?

Mr. MARTIN. Right.

Senator KENNEDY. Did you ask him whether he received any memorandum from Mrs. Beard on the San Diego convention?

Mr. MARTIN. He had no recollection of receiving a memorandum on that subject.

Senator KENNEDY. Or seeing one? Did you ask him whether he had seen one other than the——

Mr. MARTIN. Well, Senator, the phraseology——

Senator KENNEDY. What did you ask him? You can clear it up to me. What did you ask him and what did he tell you?

Mr. MARTIN. I asked him whether he ever saw the original—the alleged Beard memorandum produced by Mr. Hume. He said he had never seen that document and certainly had he ever seen it he would have read it.

Senator KENNEDY. Right.

Mr. MARTIN. I asked him if he had ever seen anything like that and he said he did not recall any particular document like that. He indicated some familiarity with events in the first paragraph of that, but nothing of the bulk of what was in there.

Senator KENNEDY. But not the first paragraph? As I understand your answer, he was familiar with the events that were included in the first paragraph?

Mr. MARTIN. With some events that might be in that.

Senator KENNEDY. But he had not seen it?

Mr. MARTIN. He had no recollection of seeing the memorandum embodying that.

Senator KENNEDY. Well, Mr. Aibel, in just defining our terms, as we understand Mrs. Beard's testimony, there was a memorandum which she admits to which is substantially the Anderson memorandum, although she said there were certain parts which were excluded or that some parts of it were fuzzy, which she said she couldn't understand. But she, with the exception, I believe of the last three lines of the first page and certain parts of the second, remembers writing such a memorandum and handing it to Mr. Merriam. I am wondering whether that memorandum was recovered or what has happened to it, whether you can give us any information about it?

Mr. AIBEL. The only information I can give you is that we conducted a file search and found no such memorandum and the only recollection other than that which you have quoted in your question we have found of the existence of such a memorandum is that of Susan Lichtman whom we tracked down in Toronto.

Senator KENNEDY. And Susan Lichtman indicated, that's right, she wrote such a memorandum, but you can't find that or ITT can't locate that?

Mr. AIBEL. That is correct. We haven't found it.

Senator KENNEDY. And, as I understand, Mr. Merriam does not know of it. In your questioning of Mr. Merriam, you figured out how you asked the question or whatever, but as I understand, the testimony of your review committee is that he doesn't know about it?

Mr. MARTIN. He has no recollection of it, Senator.

Senator KENNEDY. No recollection?

Mr. MARTIN. I think in fairness—

Senator KENNEDY. I hope we can have Mr. Merriam. This is one of the things to check. I hope he is on the list and that is one of the things we certainly ought to find out about. Or Mr. Gerrity, he didn't know about it? Did you ask Mr. Gerrity whether he knew about it?

Mr. MARTIN. I did not, Senator. I interviewed people in the Washington office and he is in New York.

Mr. AIBEL. I asked Mr. Gerrity and, to the best of my recollection, he knew nothing about either document.

Senator KENNEDY. Let me ask you, Mr. Geneen, during the course of your visits to the different administration officials, you were talking about general economic policy and antitrust policy. It was, as I understand, in a recent Fortune listing of the 500 largest corporations, indicated that ITT is the eighth largest industrial corporation; is that right?

Mr. GENEEN. I am not sure of the figure, Senator.

Senator KENNEDY. It is not important?

Mr. GENEEN. But the Fortune list makes no distinction between our operations overseas and domestic, and we have very substantial operations overseas which was one of the reasons we were trying to build a, you might say, a balance wheel for the risks we took. I would say if you cut us down to our domestic size we would be much smaller.

Senator KENNEDY. I understand in 1970 ITT reported consolidated earnings of \$353 million; is that right?

Mr. GENEEN. I can't verify the exact figure but approximately.

Senator KENNEDY. Is that approximately correct?

Mr. GENEEN. I would say yes.

Senator KENNEDY. Now in your recent SEC filing there appears the unusual entry under the heading of income taxes:

"U.S. Federal income taxes of domestic subsidiaries eliminated in consolidated tax return due to expenses of Parent Company."

Does that mean that ITT as a whole paid little or no Federal income taxes in 1970?

Mr. GENEEN. I don't think so, Senator, but I don't know the detail on that point.

Senator KENNEDY. Well, do you know if they did pay?

Mr. GENEEN. I am sure we paid Federal taxes but I don't know the exact amount.

Senator KENNEDY. Do you know what that meant?

Mr. GENEEN. No; it is a consolidated item, I imagine.

Senator KENNEDY. Do you know, Mr. Aibel?

Mr. GILBERT. Excuse me, Senator, it is very difficult for me to see how an examination of such documents as the one to which you referred, it is very difficult for me to see how questioning ITT's

income tax returns over some period has anything whatever to do with this proceeding.

Senator KENNEDY. As I understand it, the hardship argument was one of the arguments that was being made and that was being presented to all the different levels of Government, and we just saw this in our review of it in trying to evaluate it—this item.

Mr. GENEEN. Senator, might I answer that, if you are speaking about my presentations, I did not talk about hardships to any other members of the Government.

Senator KENNEDY. Economic?

Mr. GENEEN. That I think was limited to the presentation that was made to Mr. McLaren and his staff.

Senator KENNEDY. Well, Mr. Kleindienst indicated in his testimony that the presentation that was being made indicated economic hardship and we are just trying to—

Mr. GENEEN. That is correct and I am just trying to get the recipient of that presentation clear. I think that was to Mr. McLaren and his staff, as I recall. My presentations to the Government were all in the area of policy and I so stated.

Senator KENNEDY. Well, that argument was being made to Mr. Kleindienst by ITT representatives, and I think he testified to that.

Mr. GENEEN. I can only recall, glancing through the testimony, that he had Mr. McLaren set up meetings at which he was present but the real testimony was directed to Mr. McLaren.

Senator KENNEDY. I believe Mr. Rohatyn—I stand to be corrected—indicated that the economic hardship was an item which was being discussed.

Mr. GENEEN. It was an item being discussed. We are in agreement there. It is just a question of who received the presentation and it was Mr. McLaren and his staff in Mr. Kleindienst's presence.

Senator KENNEDY. Mr. Gilbert, is it your understanding we just wanted to find out whether they paid taxes?

Mr. GILBERT. My understanding is they did pay taxes.

Senator KENNEDY. They did pay taxes?

Mr. GILBERT. I am certain they did.

Senator KENNEDY. I don't understand why there was the reluctance to—

Mr. GILBERT. Senator, there is absolutely no reluctance, but as I listen to this, with all respect it seems to me that we stared out with a hearing with a particular purpose and now your questioning goes to what taxes they paid—

Senator KENNEDY. Sure.

Mr. GILBERT (continuing) Over a period of years, and I presume that if this is continued we can start going back 50 years about all the taxes they paid.

Senator KENNEDY. No, just those years—1968, 1969, and 1970—those 3 years we are talking about, was there a hardship or wasn't there? Now, that hardship argument was being made to Mr. Kleindienst, was being presented to him by ITT. Certainly I think it is fair, when we have been listening to questions here about whether the settlement was a fair settlement, and the various balance sheets and the various subsidiaries, that we might ask that question; and I am rather surprised at the reluctance in responding to it.

Senator GURNEY. Will the Senator yield?

Senator KENNEDY. Could he answer?

Senator GURNEY. I would like to clarify the record.

Senator KENNEDY. Could I hear the response?

Mr. GILBERT. Yes, sir.

Senator GURNEY. Mr. Chairman, could I make an inquiry at this point? The Senator is making the point that Federal income taxes are part of this case as a hardship factor. My recollection of the testimony is it had nothing to do with that at all. The hardship factor went to the divestiture of Hartford Insurance Co., imposing an economic burden on the company. There has been no mention at any time in these proceedings until this last minute or two about income taxes and, believe me, this inquiry is going far afield.

Senator KENNEDY. Well, Mr. Chairman, one of the points that was made on the divestiture was the tax implications of the various subsidiaries; that point was made and the record stands and I stand on that record. I am somewhat surprised at the reluctance to indicate what the position of ITT is.

Mr. GENEEN. Senator, can I clarify what that tax point is? Maybe it would be helpful.

Senator KENNEDY. Surely.

Mr. GENEEN. I think Mr. Rohatyn was aware of the fact that if we did divest the Hartford Co., their book value was much lower than whatever market value it would have and it would be a substantial capital gain that would be lost even though we were selling it at a loss and I think that was the angle or the point of the taxes that was concerned. That was on the divestiture question.

Senator KENNEDY. Mr. Kleindienst's own notes of the April 29 meeting, which have gone to the committee, talk about the tax on the capital gains being \$800 million?

Mr. GENEEN. That is correct.

Senator KENNEDY. Well, in any event, this contribution would be deductible; is that a deductible item for ITT?

Mr. GENEEN. Which contribution?

Senator KENNEDY. To the San Diego Tourist Bureau?

Mr. GENEEN. Yes; we had legal opinion that it would be deductible as an ordinary and necessary business expense and I think we brought out that there is a substantial business reason for the expense.

Senator KENNEDY. Senator Hart and myself and others were out interviewing Mrs. Beard in Denver over the weekend and I know that Senator Gurney and Senator Cook and Senator Mathias, and I, would like to, if I could, Mr. Geneen, ask you: one of the puzzling aspects of the testimony in Denver was her repeated statement that everyone at ITT thought she had, in fact, written the memorandum. The people who knew her best, who worked with her every day, knew all about the antitrust settlement, the Republican Convention, all thought the Beard memorandum was genuine and she said the "the people in the Washington office" which, by the way, presumably includes Mr. Merriam, to whom the memorandum was addressed, were "obviously delighted" to think that she did this, and she talked of, and I quote, "Gerrity's assertions that I had written it," in reference to the man who was your most trusted lieutenant on all sorts of highly sensitive matters. He, too, thought the memorandum was written.

Did they ever mention that to you?

Mr. GENEEN. No. I think I covered in my opening statement, Senator, all I knew about it, namely, we didn't know what the document was; we could find nobody that knew we had received it, and we had no copies in our files and I think there was some speculation—I don't know whether justified or not; and I think it is still to be developed.

Senator KENNEDY. Now, nonetheless, her presentation and her comments on this to the committee were that the people at the ITT office, and she mentioned these names, all felt that it had been genuine.

Mr. GENEEN. Well, as you are aware, Senator, I have not talked to Mrs. Beard.

Senator KENNEDY. Yes, but you talked to the people at the office?

Mr. GENEEN. I don't think they had any basis for any statements and I think we were all frankly puzzled as to what is this document and that is exactly what I said in my statement. What is it? We don't recognize it in our files; we can't find anybody who received it. We don't know what it is.

Senator KENNEDY. Did you know that Mr. Gerrity believed it to be a true memorandum as Mrs. Beard testified?

Mr. GENEEN. I don't have any knowledge of what Mr. Gerrity believed because I don't know what he believes—right now.

Senator KENNEDY. You are not sure whether it is real or unreal?

Mr. GENEEN. I don't know what it is, Senator. Let me say we have very few documents that nobody received the original of and are not in our files of that nature. I think I said in my opening statement I disagreed completely with the implications of it and that I can say emphatically and I know that to be true.

Senator KENNEDY. Would you agree that except for the denials by those implicated, almost every single piece of objective evidence corroborates rather than contradicts the assertions of the memorandum.

Mr. GILBERT. Senator, I don't know what you are referring to when you talk about all this evidence. I have not seen any evidence of this and I have examined these transcripts and I don't think it is a fair question. It is not true that all of the evidence corroborates this; also, it is not true, on the press reports of what Mrs. Beard testified to, to say that she said, "Yes, it is my memorandum." She said just the opposite, as I read it, and I don't think it is reasonable to ask Mr. Geneen or anybody else a question which starts off "Almost every single piece of objective evidence corroborates the assertions of the memorandum"—it just doesn't.

Senator KENNEDY. So then let's go through them. Let's go through them. You have got the sudden turnaround in the delay in the Supreme Court filing, and the meetings with Mr. Rohatyn; and the sudden turnaround with Mr. McLaren. You have got the Flanigan—

Mr. GENEEN. Are you talking now about the memorandum or the the—

Senator KENNEDY. I mean your attorney has just raised questions about the pieces of evidence which corroborate the memorandum now.

Mr. GILBERT. No, Senator, that is not true; I didn't say that.

Senator KENNEDY. Is Mr. Geneen answering or are you answering?

Mr. GILBERT. You quoted me, Senator, and I am answering that, if you want.

Senator KENNEDY. Well, all right. Go ahead.

Mr. Gilbert. All I am saying is that I think it is most unfair for you to say all of the evidence in this hearing corroborates what is said in that memorandum when I know, and I think everybody who has been here also knows, that that just isn't true.

Senator KENNEDY. Well——

Senator GURNEY. On the sudden turnaround, I thought that this was a matter of weeks and months that this has worked out.

Senator KENNEDY. Well, the record stands up quite clearly.

Senator GURNEY. What is the record on the sudden turnaround?

Senator KENNEDY. The record—I am not asking the Senator from Florida a question.

Senator GURNEY. I am asking the Senator from Massachusetts.

Senator KENNEDY. The question that I put to Mr. Geneen——

The CHAIRMAN. Does the Senator from Massachusetts—you don't want to yield to him?

Senator KENNEDY. I will state it again and then after his response if the Senator from Florida has anything in addition, I will be glad to hear it.

The outside events which I believe substantially support the inferences and the items which have been referred to in the Anderson memorandum, I feel, are convincing in terms of supporting the Anderson memorandum in and of itself.

What I was referring to in my question to you, Mr. Geneen, was: Given these other items, these other events, which we have been listening to in a variety of different ways in the course of the hearings, and given that the only real facts we have on the other side are just the denials of people who were particularly involved and that denial was very qualified by Mrs. Beard, in her testimony out at Denver, that she says that she denies writing the memorandum in its entirety but she acknowledges paragraph 1; she acknowledges paragraph 2 with the exception of one or two very important items; she acknowledges all of paragraph 3, with the exception of one or two lines at the bottom which are very important kinds of items. On the second page, on the first one or two lines, she said she didn't write them, but she believes writing the last paragraph with the exception of "Destroy this, huh?"—but she admits to writing the memorandum which included those items which I have—or excluding those items which I have referred to.

Mrs. Lichtman has stated in a sworn affidavit such a memorandum was written and it was presented, according to Mrs. Beard, to Mr. Merriam.

Then you find this series of events which I was itemizing here, telescoped over a period of—over a variety of different hearings, but would you not agree with me that the events which we have listed do corroborate the Beard memorandum? After you yourself have indicated here just briefly that you weren't really sure whether it was or was not written, and your testimony quite clearly is you know nothing of it—but can you not understand, at least that those who would be reviewing this situation and listening to this, would believe that the evidence does corroborate rather than refute it?

Mr. GENEEN. Senator, the answer is "No"; but let me see if I can clarify your question and then answer it.

It seems to me that you have come down to the whole question of what the basis of the antitrust settlement was; you sort of skipped over

it and came to the conclusions and said this corroborates the Beard memorandum. I think it is a little unfair to the people who have been testifying about the facts in the antitrust settlement.

Let me tell you about the antitrust settlement because that might help you a little because that is the thing that stands on its own. What the Beard memorandum is, I can't answer, because I had nothing to do with it, but Mr. McLaren and, I guess, Mr. Griswold, have both testified that they have, in effect, substantially eliminated all the anti-competitive problems that they had with the settlement they made with us.

Now, this wasn't just something that happened; this is after we had won the *Grinnell* case on a showing of facts with one district judge, Federal district judge; we had won the Canteen case, at least at the time the settlement was made, I think you might say the facts of the *Canteen* case were already in trial and settled as far as the trial was concerned by early January, and the facts that were going to support that case were just as evident to Mr. McLaren as anybody else at that point.

I think he had a full understanding of what his case was and, finally, after the settlement was made we have a third district judge, Judge Blumenfeld, who reviewed this case and made the comment it was clearly tailored and did take care of all the anticompetitive aspects that the Government had raised; and, I might add, too, that it is kind of interesting that all of the trial lawyers who were in the Department, and had worked on the trial, or trial lawyers at the trial, all signed this.

Now, when you examine what did they get—I forgot to touch on Hartford—there had been a long hearing on the injunction in which the district judge, Federal district judge, also ruled that the Government had failed to support the probability that they could come up with any anticompetitive practice.

So you really had three tough cases going forward, one of which, the *Hartford*, would not even come up in the same Supreme Court session, which is one of the original judges, as I understood it from Mr. McLaren and the Department, and we had both Mr. McLaren and Mr. Griswold testifying as to what they thought their own estimate of the cases were.

Let me go back to the settlement because this is the whole key to this whole hearing. Mr. McLaren has never taken the position, so far as I know, that he would never have settled anything. We were talking to him about settlement as early as November, I think, of 1970; the terms we were proposing—and the terms we were proposing were not satisfactory but as time went along there you can see the December 31 date on the *Grinnell* case date being held against him on a strong showing of facts and a statement by the judge in that case saying there was no basis for any other kind of a suit on bigness per se.

You had the *Canteen* case coming there; you had no change in the *Hartford* situation at that particular point that would make anyone believe that the outcome of the trial would be any different than the long injunction proceeding.

Now, Mr. McLaren, I can't speak for him, but just trying to put the facts before you, since you are asking for corroborating evidence, Mr. McLaren had some choices to make as he went forward; he had two bad suits going up as has been testified in the sense of the basis of fact; he had a problem as to whether he wanted to continue years

of litigation just as we did. Now, he had been arguing in the courts, if I can use this approach, that you can't keep Grinnell fire protection if you have got Hartford. Then when you are arguing about Hartford, they keep on saying you can't keep Hartford because you have Grinnell. You can't argue a solution; you have to get rid of both—one or the other. His original solution was for us to keep Hartford and get rid of the other but the fact of the decision not to take Hartford put him to the decision he had to go down the other avenue and I think it is clear he got everything he was asking for in removing the anticompetitive activity or concerns he had in this whole case.

First he got all of Canteen; he got all of fire protection of Grinnell, which is what he was seeking in the suit; he got rid of Avis, Levitt and our two life insurance companies, and, as he said properly, and was confirmed by Judge Blumenfeld's review of the decree, this removes the basis for any anticompetitive philosophy or question that the Department had.

When you look at it this way and you figure he got all of this plus the decree without the 2½ years, or whatever it was, of litigation, he would have taken, I think it is pretty unfair to say it was not a pretty sensible and hardnose settlement from the standpoint of the Government.

If anybody had a criticism it was us, because we felt it was completely wrong in principle and when the suits themselves came through the judges said there were no anticompetitive actions, but we took the decisions as a business decision, not a legal decision.

Now, when you look at all those facts, Senator, I don't think they corroborate anything but the fact that this was a damned good settlement for the Government and while tough on us, it was a sensible thing for us to do, at least we made the decision to do it and, as I think I said, I had some directors who didn't agree with that but at least we can go back to running our business. That is the basis of the settlement.

I think it has been brought out here very clearly and very squarely and I think most—well, I can't speak for the lawyers, but I think most antitrust lawyers would agree there was a good settlement.

I have read in the papers that people said why did he suddenly change his mind. Well, these are like people who want you to fight and will hold your coat. He has done a good job and he never indicated——

Senator KENNEDY. Who was that?

Mr. GENEEN. I don't think he has ever indicated to us he wouldn't settle them because we were talking settlement as early as November 1970, but I think the real question is, what were the evolving values from their standpoint and ours and I think they were very fairly worked out from their standpoint and perhaps a hardship on us but at least a workable answer from our standpoint.

Now, that is the so-called corroborating evidence that you speak about and it stands by itself.

Now, the Beard memorandum, as I said, I disagreed completely with the implications of it. I can't speak for it and I don't know what it represents, but in no sense do I feel that this line of very definitive, logical, sound action by both the Government and in our sense

business action by us in any way corroborates anything but the soundness of the settlement.

The CHAIRMAN. We will recess now until 2:05.

(Whereupon, at 1:05 p.m., the hearing was recessed to reconvene at 2:05 p.m. this date.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

We will pause for a moment to permit people to find their seats. The Senator from Massachusetts.

Senator KENNEDY. I think my time, Mr. Chairman, was up. I will just say in response to Mr. Geneen in terms of the settlement, certainly Mr. Walsh, who has been an adviser for ITT on antitrust matters for some years, as I understand it, believed the administration's position was extremely strong. Mr. McLaren had indicated up to the middle of April the importance of pursuing that case. ITT itself said that if they lost Hartford Fire that it would be completely untenable, would be unacceptable, and yet the settlement worked out was a liberal one. So I think it really is very much still an open question on that.

But I would——

TESTIMONY OF HAROLD S. GENEEN, ACCOMPANIED BY PHIL E. GILBERT, JR., HOWARD J. AIBEL, AND JOHN S. MARTIN, JR.—

Resumed

Mr. GENEEN. Senator, could I respond to correct the record a little bit?

Senator KENNEDY. Yes.

Mr. GENEEN. Mr. Walsh is a partner in Davis, Polk, who were our general counsel for approximately 50 years. I do not think he is an antitrust lawyer. He was an Assistant Attorney General or Deputy Attorney General in the Justice Department. He was not, I do not believe, trying to pass judgment on our cases. He was neither the trial lawyer nor was he following that. He was really trying to set up, as I spoke of before, a medium of an interagency review of policy which would be the equivalent of, as he saw it, legislation or the equivalent of, maybe a half equivalent of, some kind of a hearing approach, and I think if you read his letter carefully it refers to the past history of antitrust. He said based on the past, and I do not think he was trying to render a judgment on our cases. He only looked at them for a day or two and he is not an antitrust lawyer, as I understand it.

Furthermore, I guess you had a new court in existence at that point and I think our trial lawyers had a lot more knowledge in the case.

Senator KENNEDY. If the chairman will yield on the time—what were you, now that you have sort of knocked Mr. Walsh out of the party, so to speak——

Mr. GENEEN. I wanted to qualify what his job was.

Senator KENNEDY. What did you expect him to do? Tell us when you first met with Mr. Walsh and what that conversation was and what you asked him to do. If he had so little competence, if he was unfamiliar with the case and only——

Mr. GENEEN. Well, I think, Senator, his letter speaks for itself of his proposal.

Senator KENNEDY. That——

Mr. GENEEN. Let me finish, if I may. He asked that they set up an interagency review and that is what we wanted them to do.

Senator KENNEDY. What did you ask Mr. Walsh to do?

Mr. GENEEN. See if we could get an interagency review of the policy and principles of the antitrust——

Senator KENNEDY. Why did you ask Mr. Walsh?

Mr. GENEEN. Because we thought he understood the procedures of the Antitrust Division, because he had been a Deputy Attorney General.

Senator KENNEDY. He was—why did he understand the antitrust procedures?

Mr. GENEEN. Well, I guess having been a Deputy Attorney General he would be very familiar with them and he was very familiar with the policy, as he said in his letter, of an interagency review, and I think he understood our concern that we were trying to get people who were interested in this area; namely, balance of payments, economics and so on, to review and look at the policy that we could possibly follow.

Senator KENNEDY. He understood your problem, did he not?

Mr. GENEEN. I do not know what you mean by problem.

Senator KENNEDY. Well, did he understand——

Mr. GENEEN. He understood we wanted this review on a broad basis.

Senator KENNEDY. And you thought he was the best person to to it?

Mr. GENEEN. Well, he was part of our general, you might say, general counsel, outside general counsel.

Senator KENNEDY. You knew that he knew Mr. Kleindienst. Did that affect your——

Mr. GENEEN. No, it did not affect it but I am sure he knew him. And again——

Senator KENNEDY. Did you know he knew him?

Mr. GENEEN. Again, I think I knew he knew him. Again, it bears out what he asked for. He did not ask for a settlement or did not ask for a handling of our case. He asked for an impartial review to be handled by them, run by them, to which these other agencies would be invited. Now I think that is about as broad as you can go in the sense of having a review made of policy.

Senator KENNEDY. Well, he is an intelligent and extremely distinguished attorney. I do not think he used his words inadvisedly, and his letter is quite clear:

Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department.

Now, it is difficult for me to believe that such a distinguished attorney as Mr. Walsh, one who has been in the Justice Department, and has been a member of the firm that has represented ITT for some 50 years, would misrepresent his position as to the strength of the ITT case.

Senator COOK. Mr. Geneen——

Senator KENNEDY. I want to hear from Mr. Geneen.

Senator COOK. You are indicating that Mr. Walsh has represented ITT——

Senator KENNEDY. Mr. Chairman, I am not going to yield to this. After Mr. Geneen responds I would be glad to yield.

Mr. GENEEN. Well, first, I think he said, and I have not got his letter in front of me that you are reading from, he said if you look at the history of the Antitrust Department, now he was not passing any judgment on these particular cases, in fact I believe he spent less than 2 days even in looking at them, and these particular cases, as you recall, from my testimony, came through one after another from two different district Federal judges, saying there were no facts supporting it.

Now the fact that numerically there was a preponderance of favorable decisions in the past does not necessarily imply that these particular cases as we began to see as they came through—now, I had not talked to Judge Walsh but our counsel had and his comment was he was not trying to pass judgment on cases. He was trying to indicate the seriousness of the possibility if these cases went through you have a kind of policy in asking for an interagency review. He is not asking for a settlement or anything. And we had trial counsel who had spent days, weeks, and months on this thing. They were different counsel, I might say.

Senator KENNEDY. I would yield to Marlow if he had an observation.

Senator COOK. My only point was the Senator said Mr. Walsh had represented ITT for 50 years. I do not think he has practiced law for 50 years. I do not think he has practiced law for 50 years, and obviously I do not think he has represented ITT for 50 years.

Mr. GENEEN. And he did not represent us at any time as an anti-trust lawyer except in writing and asking for this review.

Senator COOK. That was all.

Senator KENNEDY. Fine.

Well, I suppose since he did not have much—Mr. Geneen, you cannot have it both ways. You cannot have it in such a way that he did not really understand the case, just reviewing this thing rather casually and writing a note, you cannot say, at least as far as convincing me—it must have been because he had known Mr. Kleindienst, that is why you were asking him to interfere.

Mr. GENEEN. No, no. I think he understood the—we had no idea of the so-called request for a, you might say, interagency review and I think he said in his letter this was a historical precedent. I mean, there were precedents for this kind of review. We would not know this, he knew it.

Senator KENNEDY. Did you discuss it with Mr. Walsh?

Mr. GENEEN. I think at some point he talked about the case.

Senator KENNEDY. Did you or did you not?

Mr. GENEEN. I do not recall any particular discussion but I know I met him and talked about it but I do not recall the substance.

Senator KENNEDY. Who did in ITT?

Mr. GENEEN. Well, I probably talked with him and I am sure counsel did.

Senator KENNEDY. Did Mr. Aibel talk to him?

Mr. GENEEN. Probably.

Senator KENNEDY. Can he answer that?

Mr. GENEEN. Sure, if he is here.

Mr. AIBEL. Yes; I did talk to Judge Walsh.

Senator KENNEDY. Could you come up here?

Mr. AIBEL. I am sorry, Senator Kennedy, aside from that question, I did not hear what the preceding questions were. I just entered the room.

Senator KENNEDY. Did you talk with Mr. Walsh and ask about the ITT case, let us start at the beginning.

Mr. AIBEL. Yes.

Senator KENNEDY. And ask him to write to Mr. McLaren, I mean Mr. Kleindienst?

Mr. AIBEL. Well, I made that specific request after discussing with him the appropriate procedures, and I knew he had been Deputy Attorney General of the United States and I knew he was familiar with the way in which the Department operated.

Senator KENNEDY. Did you talk with him about the case itself?

Mr. AIBEL. I gave him a rundown of where we were in the cases and what the merits were, and my analysis of the cases. As I analyzed them, what Mr. McLaren was seeking to do was to have, in effect, the Supreme Court enact broad new legislation through securing, if he could, a radical construction of the Clayton Act which went way beyond the language of the act and legislative history to have the Clayton Act applied to any merger which involved companies of large size which the Clayton Act, as anybody who read it can understand, does not proscribe, and I explained to him that we felt that this had serious public policy aspects, and that we were concerned, not only for our own company's sake, and what we had done and the belief that we were doing things that were perfectly lawful, but because of what we saw as being the adverse long-range impacts on the U.S. economy and the population in general. And so he looked at that thesis and said that he thought that this was an appropriate thing to draw to the attention of the administration, of the Department of Justice, and he referred to procedures with which he was familiar which were carried out during his time as Deputy Attorney General when there were views solicited from various other agencies and departments of the Government when there was going to be a major policy shift by way of recommending revenue legislation, and so he thought that the situation was sufficiently analogous as I have described it to suggest that a similar procedure be followed by the Department of Justice.

Senator KENNEDY. Now, you knew that there was an interagency committee on this, did you not?

Mr. AIBEL. I had heard there was one but that is all I knew about it.

Senator KENNEDY. Did not the ITT lawyers know that?

Mr. AIBEL. I told you I knew that there was one. I was told by one of the members, a classmate, that he had been appointed to such a committee, and that was perhaps 2 years before and I had never heard anything about it since that time.

Senator KENNEDY. Who was that?

Mr. AIBEL. James T. Lynn.

Senator KENNEDY. What is his position, who is he?

Mr. AIBEL. He is now Deputy Secretary of Commerce, he was at the time General Counsel to the Department of Commerce.

Senator KENNEDY. You mean that the interagency committee never really met?

Mr. AIBEL. I do not know whether it did or not.

Senator KENNEDY. But he indicated to you that it did not?

Mr. AIBEL. No; he did not. I did not say that, Senator Kennedy. I said he told me of its existence at about the time it was formed. I heard nothing about the committee since that time.

Senator KENNEDY. Did you see Mr. Walsh's letter before it went out?

Mr. AIBEL. No.

Senator KENNEDY. Did you, Mr. Geneen?

Mr. GENEEN. I do not recall. I do not recall whether I saw it before it went out. There is a letter and an attachment. I do not recall seeing the letter and I may have seen the attachment.

Senator KENNEDY. Would you not have seen the letter if you had seen the attachment?

Mr. GENEEN. I do not know. I do not recall.

Senator KENNEDY. Do you know what was in the attachment? Do we have that?

Mr. GENEEN. I do now since I reviewed it but I would have forgotten long since.

Senator KENNEDY. The letter says that you asked him to write it, write the letter.

Mr. GENEEN. Well, that is probably true. I did not ask him to write the letter. We asked him to see if he could set up a review of it.

Senator KENNEDY. Presentation.

Mr. GENEEN. That is right.

Senator KENNEDY. You do not remember ever reading the letter?

Mr. GENEEN. No; I do not. I mean I do not have any memory of it, is the way I would put it.

Mr. AIBEL. Senator Kennedy, just to make sure by my correct answer I am not misleading you, I did see prior drafts of or a draft of Judge Walsh's letter and, of course, I think I did see the brief in draft form before the letter was dispatched.

Senator KENNEDY. Did you see the sentence about losing the case?

Mr. AIBEL. I do not know, I do not remember whether I did. I do not think he said, however, in that letter that he thought that ITT would lose the case. I think if you refer to the text, I do not have it in front of me, he said that wherever the Government tries to win a case there is a good possibility that it may, and that was a general statement.

Senator KENNEDY. Well, the statement, it says here in the letter and I am quoting:

Looking back at the results of the government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed the court has at times adopted a position more extreme than that urged by the Department.

Would you have wanted that—if that had been called to your attention, do you think that would have represented the position of ITT?

Mr. AIBEL. I do not know because it is so highly speculative. All I can say right now I do not think it means what you are implying it means, that he thought we were going to lose the cases.

Senator KENNEDY. Well, let me just ask you, Mr. Aibel, would you write a letter with that kind of language in it to an opposing party if you were in a lawsuit?

Mr. AIBEL. Well, I will tell you——

Senator KENNEDY. If you thought you were going to win.

Mr. AIBEL. Well, I do not know whether I can answer it without an addendum except to say that when you are seeking an extension or a delay of time, when you are advocating a position, I suppose that you make speculative statements such as Judge Walsh said. If he said it, "We think we are going to win," there is no real basis for asking for an adjournment. I mean, I am sure that you in the practice of law have encountered situations where you are pleading hypothetical and that was about what Judge Walsh was doing. As I say, you always admit. [Laughter.]

Senator KENNEDY. I found that quite often. [Laughter]

Mr. AIBEL. It is the same as on a motion to dismiss, you just admit for the purposes of the motion all the facts that are alleged.

Senator KENNEDY. We had situations like that many times when I was an assistant district attorney up in Boston. [Laughter.]

Let me ask you, Mr. Geneen, it says in the Walsh letter:

Ordinarily, I would have first seen Dick McLaren, but I understand that you, as acting Attorney General, have already been consulted with respect to the ITT problem * * *.

Can you tell us what that means?

Mr. GENEEN. Well, it is not very clear in my recollection literally, Senator, but my best guess is that he knew that we had made a request to make the presentation that we did to Mr. McLaren. This was probably what he was referring to, the fact that Mr. Rohatyn had asked at some point earlier or maybe it was the fact that Mr. Ryan had mentioned it to him, I do not recall exactly, we were at that time thinking of going forward with that.

Senator KENNEDY. Who told you this—this is before the Rohatyn meeting?

Mr. GENEEN. Yes, but I am trying to remember when it was Mr. Rohatyn spoke to him on the phone and I think it was probably earlier than that, and I am quite sure it was because Mr. Rohatyn's meeting with him, I think, was on the 20th or something like that but it was preceded by a phone call.

Senator KENNEDY. Mr. Walsh called on the 16th, Mr. Rohatyn called on the 18th—I think it was the 18th; that was our best judgment. It was the Monday.

Mr. GENEEN. Then it may have been Mr. Ryan, but I thought he spoke to him earlier in the month was my remembrance.

Senator KENNEDY. Do you remember having any conversations with Mr. Ryan about this?

Mr. GENEEN. No.

Senator KENNEDY. Who would have told you, you said maybe Mr. Ryan?

Mr. GENEEN. Well, most of my information came from counsel.

Mr. AIBEL. I had talked to Judge Walsh to ask him whether he has any recollection of what he was referring to. My thought, when I saw it, and I had not looked at the letter for some time, was that he was referring to information that I had given him that Mr. Rohatyn was going to see Mr. Kleindienst.

There is another possibility which has come to my mind, I do not know whether Judge Walsh shares this, and that was that I had told him that Attorney General Mitchell had disqualified himself in the ITT cases, and that on a prior occasion Mr. Kleindienst had been, had been conferred with concerning a procedural matter in the ITT cases.

Senator KENNEDY. When was that, do you remember?

Mr. AIBEL. It was in April of 1969.

Senator KENNEDY. Just finally—my time is up—do you have, Mr. Geneen, any reluctance in our asking Mr. Walsh about this, either about the letter or these other things?

Mr. GENEEN. No, sir. But he made contact with counsel.

Mr. AIBEL. No, sir.

Senator HART. The Senator from Nebraska.

Senator HRUSKA. I will reserve my 10 minutes for the time being and allow Senator Cook to carry on as he wishes.

Senator COOK. Thank you, Mr. Chairman and Senator Hruska.

Mr. Geneen, I find the theory that you cannot have it both ways very interesting. Are you familiar with the Dean Griswold testimony?

Mr. GENEEN. I glanced through the testimony some time back.

Senator COOK. Have you had an opportunity to read it?

Well, if Mr. Walsh was one of our outside counsel, I would remind the committee that Dean Griswold was nominated by President Johnson, he was introduced to this committee by the distinguished Senator from Massachusetts, who said that he was probably one of the most remarkable, possessed one of the most remarkable, legal minds in the country. Dean Griswold said that this was not merely a good settlement but it was a very good settlement. He also said that it was his opinion that these cases could not be won in the Supreme Court of the United States. I assume by that, Mr. Geneen, that if Dean Griswold ever decided to leave the Office of Solicitor General, you would rather have him as your lawyer rather than Larry Walsh, is that correct?

Mr. GENEEN. Mr. Walsh I do not believe is an antitrust lawyer to start with, and I believe Dean Griswold is.

Senator COOK. So the difference of opinion went from somebody who was requested in a major law firm—how many lawyers are there in that law firm?

Mr. GENEEN. Over a hundred, I am informed.

Senator COOK. Judge Walsh was asked to write a letter, in which he said that he thought conceivably that the Government could create new law under the Clayton Act, and to that extent somehow or another he has now become an expert on the fact that the Supreme Court would have found against ITT; and yet Dean Griswold, who is the Solicitor General of the United States, made it very clear in testimony here, which I think is totally and completely un rebuttable, that he did not think these cases could be won, and that nowhere along the line had they yet, in one phase of the cases, been won by the Federal Government, is that not true?

Mr. GENEEN. That is correct. At that particular time the *Canteen* decision had not come down but it came down later the same way.

Senator COOK. He also testified that at that stage of the game with the *Grinnell* case coming he authorized its appeal because he thought

McLaren ought to have an opportunity but he did not think McLaren could win it, did he not testify to that?

Mr. GENEEN. That is my memory of it.

Senator Cook. He further said, I think, that on the questions of fact in that case coming up, that none of the questions of fact, and I think he corrected it and he said, I think, none of the major questions of fact, had been won by the Federal Government in the lower court, is that correct?

Mr. GENEEN. I do not remember his language but the opinions of the judges bore that out.

Senator Cook. So not having it either way makes it rather interesting because I think we forget some times what some people may have testified to in this record.

Mr. Geneen, if you had seen that language in the Walsh letter would it really have bothered you?

Mr. GENEEN. Well, if I had focused on it, it certainly would but I do not recall—

Senator Cook. Why would it have?

Mr. GENEEN. Well, I do not think it was an accurate representation of what our cases were. I can see that as a pleading to get a hearing, if you might say, to be run by McLaren the way it was set up, I could see you could use some kind of language to precede the concern that you might have if it did go that way. You get into a question of degree.

Senator Cook. Was one of the reasons for this merely what—well, I hate to ask you what he thought, because we have got enough of that in the record—is one of the reasons for your feeling this way because of your own activities during 1969 and 1970?

Mr. GENEEN. Well, one of the reasons we were asking for this interagency review was as a substitute for the normal committees that would have seen it before it went through Congress and, as I said, I feel like I was going around trying to wake people up to the problem. But I think, coming back to Judge Walsh, his assignment was not to settle our cases, and he was not undertaking to do that. He was undertaking to see if there could be an interagency review for some of these points that I had been pressing, on the national interest and balance of payments and the economic, could be presented by the people who were interested. As I said this morning, an interesting thing to me was he did delay for this interagency review but, on the other hand, he did not invite anybody and I think that is part of the testimony.

Senator Cook. Is it not a fact during that same period of time there were some six committees of both the House and the Senate that were taking testimony at that time on conglomerates and on corporate mergers and on the tax situation as it applied to mergers, and that not only you as an individual who believed that this policy was bad but many other people were pretty busy appearing before committees of both the House and the Senate?

Mr. GENEEN. That is correct. The only question you might have had is they were moving a lot slower than this program was.

Senator Cook. Thank you, Mr. Chairman.

Senator HART. Senator from California.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Aibel, do you have the report from Dr. McCrone and Mrs. Pearl Tytell with you?

Mr. AIBEL. No, Senator. The reason I was absent from the room is because I was inquiring where it was and actually was just about to depart to pick it up myself, which I would like to do if the Senator will approve.

Senator TUNNEY. All right. I cannot speak for other members of the committee. I may have some questions which would be relayed to you.

Mr. AIBEL. I am sorry, I do have the report now. It has just been handed to me. I also have the information which you requested concerning the fees which I would be glad to give to you.

Senator TUNNEY. Please do.

Mr. AIBEL. Mr. and Mrs. Tytell, the operators, were retained on March 7 at an agreed-upon rate of \$1,000 a day for "experts" and I can testify I know they worked almost 24 hours a day on some of those days.

Dr. McCrone was retained on March 21, and there has been no discussion with him of the fees and no fees have been established.

Senator TUNNEY. How many days have Mr. and Mrs. Tytell been working?

Mr. AIBEL. I am sorry; I do not know.

Senator TUNNEY. They began on March 7?

Mr. AIBEL. Senator, I did not hear you.

Senator TUNNEY. They came on March 7?

Mr. AIBEL. I am not sure whether they actually started to work on March 7 or whether they were retained and started working the next day.

Senator TUNNEY. Do you still have the memorandum, the Anderson-Beard memorandum? I am thinking of ITT when I say you.

Mr. AIBEL. No.

Senator TUNNEY. How many days did you have it?

Mr. AIBEL. I do not know. I do not think we had it any days. I think we examined it for hours but that is the best information.

Senator TUNNEY. In Washington and New York?

Mr. AIBEL. My understanding from what I heard from the chairman, I do know it was only in Washington, and the chairman said it was at the premises of the Federal Bureau of Investigation and that is my understanding, although I have no personal knowledge.

Senator TUNNEY. You do not know whether it was in New York or in Washington?

Mr. AIBEL. No, sir; I know that it was not examined. I believe it was not examined, in New York. I believe it was only examined in Washington.

Senator TUNNEY. Only examined in Washington.

And the fee of \$1,000 a day was a fee that was paid them during the days that they were examining it or——

Mr. AIBEL. Senator, I must have misspoken. I did not say it was paid. That was the fee that was established.

Senator TUNNEY. Established. Is that during the days they were examining it or was that to be paid during the period of time from the point that they were first hired to the time they submitted their report?

Mr. AIBEL. It was a per diem fee, as I understand it, for the days they actually worked.

Senator TUNNEY. Until the final report was sent in, it is a very simple question. I hope I am not being unfair in asking the question. I am just trying to establish how much she was paid, that is all, and I think it is a legitimate line of inquiry. I think if you were sitting here you would ask the same questions.

Mr. AIBEL. When I receive a bill I will submit it to the committee. I have not gotten a bill and I do not know what the bill will be, and I am not sure that all the work of the Tytell's for instance, is over. I do not have a bill. We have not been——

Senator TUNNEY. Does the report that you have represent a final report?

Mr. AIBEL. Senator, I am in position of having a report which I am submitting to the committee which I have not read myself.

Senator TUNNEY. OK. Well, maybe you could get the information for us.

Mr. Geneen. does the law firm of Mudge, Rose, Guthrie & Alexander do any work for ITT or any of their subsidiaries?

Mr. GENEEN. Well, I am not too familiar with our legal usages of any of these firms other than Davis, Polk, who are our main general counsel. They had been representing one of our subsidiaries. I think I could ask Mr. Aibel here to answer that because he is more familiar with that.

Senator TUNNEY. Thank you.

Mr. Aibel, was the law firm of Mudge, Rose, Guthrie & Alexander doing any work for ITT or any of its subsidiaries?

Mr. AIBEL. Yes.

Senator TUNNEY. Whom, which one?

Mr. AIBEL. The only subsidiary of which I have present knowledge, present recollection of, is ITT Continental Baking, the company which they had represented primarily in financial matters prior to our acquisition of that company.

Senator TUNNEY. Do you have any information as to what fees were paid to Mudge, Rose, Guthrie & Alexander in the last, say, 3 years?

Mr. AIBEL. No.

Senator TUNNEY. Does Mudge, Rose, Guthrie & Alexander still represent ITT or any of its subsidiaries now?

Mr. AIBEL. Well, they have worked on various financial offerings by ITT Continental Baking. The last occasion of that, I believe, was about June of 1970 when Continental Baking issued some bonds. The partner who worked on the matter was a man named of Frangos. That is my best recollection. I have a recollection that they are representing one of—maybe it is Continental Baking, but it might be another—one of our subsidiaries in a minor tax case but I have no further details that I can recall on that.

Senator TUNNEY. Do they handle any antitrust work for you?

Mr. AIBEL. No.

Senator TUNNEY. Do you have any idea, and I hope that it would not be considered prying into corporate secrets, but would it be possible to find out what amount of money was paid to the firm——

Mr. AIBEL. Certainly, Senator.

Senator TUNNEY (continuing). Over the past 3 years?

Mr. AIBEL. Quite quickly.

Senator TUNNEY. Has Mr. Mitchell rejoined the firm, do you know——

Mr. AIBEL. I do not know.

Senator TUNNEY (continuing). Since he left the Office of the Attorney General?

Does the firm represent ITT, the parent corporation?

Mr. AIBEL. No.

Senator TUNNEY. At any time in the past has the firm represented ITT?

Mr. AIBEL. No. At least, not to the best of my knowledge, over the last 8 years, 7 years.

Senator TUNNEY. If possibly we could find out what subsidiaries of ITT the firm does represent, and the amount of money that was paid to the firm by the various subsidiaries, if there were more than one, and the type of work that was done, it would be appreciated.

Now, with regard to the \$600,000 offer that was referred to by Mrs. Beard, that that unidentified White House source called Mr. Merriam about, the testimony of Mrs. Beard was in answer to a question by Senator Kennedy:

Mrs. BEARD. So, of course, when I saw that I thought, well, it is something the guy has got ahold of, something about the White House. I remember that Mr. Merriam asked me one day, that he had gotten a call from somebody at the White House, wanting to know—on this commitment, underwriting commitment, which is all in the world it was, there in San Diego, and I never did know the exact amount because I didn't stay that long, had suddenly jumped. "Is this \$600,000 going to Nixon's campaign," and Merriam had been aware as much as anything I had been doing, and so he asked me to explain it and he said, "I don't understand," and I said, "Well, it is all completely false, whatever you are hearing or from whatever you are hearing." He said, "Write it down," so as that point I wrote part of this paragraph explaining to him and that—until we get down to this—

Senator KENNEDY. Do I understand, Mrs. Beard, that Mr. Merriam evidently received a call from someone in the White House?

Mrs. BEARD. Yes, sir.

Senator KENNEDY. And you don't know who that was from? Do you know who it was from?

Mrs. BEARD. I am not sure, sir. I don't think he told me.

Senator KENNEDY. But, in any event, in response to that call that Mr. Merriam mentioned to you, he asked you to prepare a memorandum?

Mr. BEARD. Well, first, he asked me to come to the office. "What's going on? What's all this all about?" All very excited. He can get pretty excited sometimes, and I tried to explain as much as I knew because I had not heard any final figures there when I left San Diego, when I left the party in San Diego. I said, however, "This has nothing to do with it and whatever commitments Sheraton has made, this put across three hotels, three very expensive properties." He said, "I don't understand it. Go write it." And I did.

Senator KENNEDY. And this part you remember?

Mrs. BEARD. The first part fits in very well.

Mr. Geneen, did you know anything about that telephone call?

Mr. GENEEN. No, I do not, and I read, at least the version of the testimony that we got which was, I think the press transcript, and it does not make very much sense, something about a number of—but the key point is there is no such figure or commitment or anything else, and I said it several times.

Senator TUNNEY. I understand that.

Mr. GENEEN. Let me say it again because it seems to be overlooked. We had only one commitment and that is in our telegram a 100,000 conditioned on the headquarters and the undertaking to match another hundred. There is no other figure, there is no other commitment, no other commitment of any kind. Now I read this and I do not have any explanation for it because in my mind it is not real.

Senator TUNNEY. Did Mr. Merriam report the telephone call to you?

Mr. GENEEN. No, he did not.

Senator TUNNEY. Did he——

Mr. GENEEN. This is the first time I have heard of it, that is, when I read the testimony.

Senator TUNNEY. Would you not consider this to be pretty important?

Mr. GENEEN. I do not know what it represented.

Senator TUNNEY. Well, a telephone call, if such a telephone call was made, would you consider it to be important?

Mr. GENEEN. Well, it was not reported to me, sir.

Senator TUNNEY. But do you not consider it it be important?

Mr. GENEEN. Well, I do not know if it is real. I do not know what it is.

Senator TUNNEY. Well, assuming that it is real, is it important?

Mr. GENEEN. If it was real then it would be something that was important, but I say it is not real because there is no such commitment.

Senator TUNNEY. So, in other words, you do not think that Mrs. Beard is telling the truth when she said——

Mr. GENEEN. I did not say that, I say I do not know what this is and it is not real because there is no such commitment.

Senator TUNNEY. I understand that. I understand you did not know there was any such commitment. I am not talking about the commitment but I am talking about the telephone call to find out if there was such a commitment, is that important?

Mr. GENEEN. No. 1, I do not know there was any telephone call, it was never reported to me, what Mrs. Beard thought or did not think was never reported to me. I do not know if there was such a figure because it is not real.

Senator TUNNEY. I am asking you if such a call were made would it be important?

Mr. GENEEN. I do not know the circumstances of the call.

Senator TUNNEY. Is it a crime for a corporation to give a contribution to a campaign?

Mr. GENEEN. Certainly it is and we have not given one to a campaign. We have given one, and I will say it again, it comes from your area, to the San Diego Convention and Tourist Bureau. That is part of a joint effort of the community and it is limited to what we gave. That is the only figure that we have ever committed ourselves to.

Senator TUNNEY. Correct.

Mr. GENEEN. I appreciate your line of questioning, Senator, but I am trying to say I do not know anything about this call. The figure does not make any sense, and I have no way of speculating on what it would have meant or not meant.

Senator TUNNEY. All right.

Well, if you read Mrs. Beard's testimony——

Mr. GENEEN. Right.

Senator TUNNEY (continuing). As I read it, the telephone call was made from the White House, and the questioner at the White House, unknown source, was asking whether it was a contribution to the campaign or whether or not it was to the convention bureau, and my question to you was that if in fact Mrs. Beard's testimony under oath is correct, is it important inasmuch as it relates to a crime?

Mr. GENEEN. Well, I cannot understand what the testimony means because I know of absolutely no commitment that would fit this description. The only commitment I know is one I have already covered very thoroughly so I do not know what it represents and I do not have any speculation on it because it sounds to me like it is not logical. Now, whether somebody is mistaken, mixed up, or what it represents, I do not know.

Senator TUNNEY. Have you checked with Mr. Merriam?

Mr. GENEEN. No I have not.

Senator TUNNEY. When did you learn about it?

Mr. GENEEN. I read about it yesterday when I read the testimony.

Senator TUNNEY. Did you think it is important to check with Mr. Merriam?

Mr. GENEEN. I think it is ridiculous, is my own feeling.

Senator TUNNEY. Maybe it is ridiculous but would it be something that you would normally check with a subordinate inasmuch as it relates to your corporation and inasmuch as it relates to the possibility of your corporation committing a crime?

Mr. GENEEN. Well, let me say, Mr. Merriam is not there, he is away this week, No. 1. No 2, I do not think it makes any sense and I just looked at it and I said this is the same kind of thing we have been reading in the newspapers and which also would not make sense, that is my judgment.

Senator TUNNEY. Well, this was, you have read it—you have read it, have you not, Mrs. Beard's testimony?

Mr. GENEEN. I have.

Senator TUNNEY. And it was made under oath, correct?

Mr. GENEEN. I read this version of it.

Senator TUNNEY. I saw Mrs. Beard being sworn in and she was under oath and I recall her saying it and I have the transcript before me.

Mr. GENEEN. A lot of this is garbled.

Senator TUNNEY. Garbage?

Mr. GENEEN. Garbled.

Apparently the press copy did not get a lot of it, when I read it.

Mr. GILBERT. Senator, one possible source of confusion is, I do not think you are using a transcript which is the same as the one we have. The transcript we have is something that is marked "for press use only" and, I take it, you have an official transcript. We have never seen it.

Senator TUNNEY. Well, I have a copy if you want to take a look at it. It was given to me a few hours after the hearing. I would assume that, I think—if you would like to take a look at it, you can—I think it might be the same as the one that you got.

Mr. GILBERT. It may be, Senator. Does yours say on the front "not official, for press use only"?

Senator TUNNEY. Mine says, "Report of proceedings, hearing held before Committee on the Judiciary, Special Subcommittee, Denver, Colo., volume I—first session, nomination of Richard G. Kleindienst to be Attorney General of the United States, Sunday, March 26, 1972."

Senator KENNEDY. Why do you not read what yours says?

Mr. GILBERT. We are, Senator, but when Mr. Geneen says it is garbled we are looking at a transcript, when Senator Tunney reads, where words are left out, where it says garbled here and so on.

Senator TUNNEY. Let me show you this.

Mr. GILBERT. Just to confirm, Senator Tunney, these are not the same transcripts.

Senator TUNNEY. They are not the same transcripts?

Mr. GENEEN. The wording is different. But even both of them are kind of crazy, what is this thing, "it suddenly jumped," I am reading from the press one, "it suddenly jumped, is this 600,000 going to the Nixon campaign". What does this mean, it suddenly jumped?

Senator TUNNEY. That is Mrs. Beard speaking apparently.

Mr. GENEEN. The other one says, "I didn't stay that long, had suddenly jumped," whatever that means. That is a new quotation. "Is this \$600,000 going to the Nixon campaign?" My answer is no, there is not any such figure, there is no such figure.

Senator TUNNEY. And I understand precisely what you say, there has only been one commitment, \$200,000.

Mr. GENEEN. That is correct.

Senator TUNNEY. However, Mrs. Beard testified under oath there was a call from the White House, an anonymous source from the White House called, and that anonymous source was questioning whether or not the amount of money, \$600,000, was going to the campaign, to Richard Nixon's reelection campaign, or whether or not it was going to the convention bureau, to the convention bureau in San Diego. Inasmuch as the phone call from the White House in part related to the possibility of a crime, namely, a corporation giving money to a reelection campaign, it would seem to me that would warrant your attention.

Mr. GENEEN. Yes, but—

Senator TUNNEY. It would seem to me it ought to be checked out.

Mr. GENEEN. We can check it out and I can assure you of the answer. Let me read this again because we have your text now. It does not say Merriam said this is what came out of his White House call, I am just reading from this, all of a sudden it says, "Is this \$600,000 going to the Nixon campaign." And if I read on a little further and quoting still, apparently what Mrs. Beard said:

"I don't understand," and I said, "Well, it is all completely false, whatever you are hearing or from whatever you are hearing."

Senator TUNNEY. That is right, Mrs. Beard is saying it was completely false.

Mr. GENEEN. Yes, but—

Senator TUNNEY. But the fact is the anonymous source from the White House called wondering about it.

Mr. GENEEN. I am not quite clear what happened because Mr. Merriam does not say this was in the call. I will read the language:

... I never did know the exact amount because I didn't stay that long, had suddenly jumped.

It is not even grammatical. Then:

"Is this \$600,000 going to Nixon's campaign," and Merriam had been aware as much as anything I had been doing ...

Apparently nobody knew what was the call.

Senator TUNNEY. Apparently it was a call from the White House.

Mr. GENEEN. I do not know, I was not there. It says so here.

Senator TUNNEY. I know you were not there and neither was I.

Mr. GENEEN. Senator, I am trying to be helpful but it is kind of hard for me to imagine what this was all about because they both apparently do not think it makes sense. I do not think it makes sense and there never was such a commitment.

Senator TUNNEY. Well, I would hope——

Mr. GENEEN. If you want me to put myself on——

Senator TUNNEY. I would hope it never does make sense because I would hope there never would have been a call from the White House regarding a \$600,000 contribution——

Mr. GENEEN. So do I.

Senator TUNNEY (continuing). Of ITT made to the reelection campaign of Richard Nixon.

My only point is this, it seems to me, that it would be something which you as the president of ITT might think was important enough to check out.

Mr. GILBERT. Senator, might I intrude something here? Mr. Geneen has testified, which I plainly know to be a fact, that he saw this thing, this press transcript, last night. After we had gone to bed we arose and came to this hearing. You are talking about something he saw last night.

Senator TUNNEY. I understand. Well, did you know there was a story, at least one, that I saw in the Washington Star on Tuesday I believe it was——

Senator KENNEDY. If the Senator will yield, I believe this copy I have is the Monday New York Times with the very language that you have read here. I wonder why it was only brought to his attention last night.

Mr. GILBERT. I do not know why it was but I know perfectly well I showed it to him, it was last night and I had just got this thing yesterday afternoon.

Mr. GENEEN. Senator, I am trying to be responsive.

Senator TUNNEY. In other words, your testimony, Mr. Geneen, today is you did not know about this until last night, you did not know about Mrs. Beard's statement regarding the White House call last night?

Mr. GENEEN. I do not recall if somebody said something to me or not but I went over the testimony last night. Now, my comment on this figure is that I know nothing about it. Literally, I do not think from reading this transcript that they know anything about it.

Senator TUNNEY. I do not think that the figure is as important as the fact that there was a call from the White House regarding the question of whether or not the money was being made available to the campaign or whether it was being given to the convention bureau at a time that the ITT suit was being considered negotiated for settlement. That was the importance of it, it seems to me.

Mr. GENEEN. Let me say I know of no amount that anybody in the White House would be talking about because the only commitment we have is the one we had in our telegram. Now, if somebody is confused or if they are not I do not know. It is perfectly apparent from here that both these people cannot understand it from what they have said here so what the heck this call was and what was said I do not know. Now, if you are saying if everybody believed it it would have to be corrected certainly. If it was true as you say, there would be some-

thing else again but actually, there is no such figure, there is no such commitment, and I do not understand what it is all about.

Senator TUNNEY. From your own personal knowledge, I understand that; but what I was trying to get at is why it was that Mr. Merriam had not been queried on the point, inasmuch as now 2 days have gone by since the story broke, or 3 days, since Mrs. Beard testified to the committee, and I know that it was the lead story in the Washington Star on Monday night, it was the night that we returned, the night I returned, from Denver, and I am just curious to know why Mr. Merriam has not been queried on this.

Mr. GENEEN. Well, Mr. Merriam is away, as I said, and I did not query him. I focused on this last evening, we went through it, but the key point in my mind is I would not believe what I read anywhere on this thing. I have read a lot of statements about it in California about what we gave and all of the same type. Not necessarily supported and not necessarily made sense. I know what we did and it does not correspond to this at all.

Senator TUNNEY. But from your own knowledge, from your own knowledge you are not able to say whether or not Mrs. Beard is perjuring herself when she says that there was a call from the White House?

Mr. GILBERT. Excuse me, Senator, that is calling for a legal conclusion. Mr. Geneen has testified to what he knows. He is not a lawyer, and now you are asking him a question which requires a lawyer to respond whether something is perjury. He said he did not know anything about it.

Senator TUNNEY. Do you care to respond?

Mr. GILBERT. Excuse me?

Senator TUNNEY. Do you care to respond?

Mr. GILBERT. I am responding because I think it is unfair.

Senator TUNNEY. Did you, as Mr. Geneen's lawyer, know about this?

Mr. GILBERT. I certainly did not until I saw it, this press transcript.

Senator TUNNEY. And when did you see that?

Mr. GILBERT. I saw it yesterday.

Senator TUNNEY. And between yesterday and today did you make any effort to get hold of Mr. Merriam to find out the facts?

Mr. GILBERT. I most certainly did not. I know Mr. Merriam is not in town. Between yesterday and today my job, like Mr. Geneen's, has to do with the hearings today.

Senator TUNNEY. Well, do you not think this is relevant to the hearings today?

Mr. GILBERT. It may be, and maybe we have to make some inquiries about it, but the fact of the matter is that this came up yesterday, here we are from 10:30 this morning, and I think it is unreasonable for anybody to draw an inference that somehow we do not take anything in this case seriously. But that is what happened. Mr. Merriam is not here. He is not available. He, of course, will be, but the fact of the matter is that is what happened.

Senator TUNNEY. Well, I am not going to worry the bone any more but I would say this, it seems to me clearly that the allegation that was made by Mrs. Beard at the hearing under oath is one which relates to the possibility of a crime being committed by a corporation and, it would seem to me that inasmuch as one of ITT's employees

purportedly received such a phone call from an unidentified source at the White House, that this would be something which ITT and its legal counsel would want to learn as much about, as fast as possible, so that they could give to this committee a better understanding of what, in fact, took place, and it also seems to me to be very clear that we are going to have to have Mr. Merriam's testimony.

Senator COOK. Mr. Chairman——

Senator HART. The Senator from California has used 26 minutes. The Chair is always in difficulty, and let us for the next 45 minutes be highly arbitrary; 10 minutes a head and then we will not have the uncomfortable——

Senator COOK. May I say to the chairman it is kind of the wrong time to be arbitrary and I would suggest——

Senator HART. All right. You are right. This just reflects the dilemma the Chair is put in, when continuity is either interrupted at the end of a fixed time——

Senator TUNNEY. I will yield my next 10 minutes to Senator Cook.

Senator HART. The Senator from Kentucky was very patient during the exchange and did not interrupt, and I now suggest that the 10 minutes that I have not yet used will be yielded to the Senator from Kentucky on to his 10; how about that?

Senator COOK. May I say to the chairman it is not a matter of whether I intend to take all that time or not, and I do not think that is really the question. I think the question is whether we are going to abide by at least the maximum rule or whether we are not going to abide by any rules.

Senator HART. Unless we abide by the maximum and are hard-nosed we will never be happy. Either we are flexible, which will leave everybody happy if he is getting it, or unhappy if he is not, or arbitrary. I will give you 10 minutes of mine and you take 10 if you need it and that will bring us another 20 minutes toward the end.

Senator COOK. Thank you, Mr. Chairman.

May I say before I propound any questions, I think some of the questions that have been asked by the Senator from California constitute some of the rankest conclusions that I could ever get from this testimony. First of all, she did not say that she had—that there was a telephone call. She said Mr. Merriam told her there was a telephone call from the White House. Again, she did not know whether there was one. She had merely been told by somebody else that there was one. I refer to not only page 48 but page 63 of the transcript.

As a matter of fact, I would like to read from page 63 of the transcript:

Mrs. BEARD. Mr. Merriam called me one day. I thought I had explained this this morning. And asked me to come to his office. He said he had gotten a call from the White House. "What in the world is all this? What is the commitment? What happened out in San Diego? And at that time the San Diego papers were—I did say it this morning—were everything from \$400,000 in cash or, no, it was going to be \$400,000 in services, no, it was only \$100,000. I have a complete file on some of the absurd things that were coming out of the newspapers in San Diego at that time.

Now, Mr. Geneen, would it seem logical to you, if the San Diego papers were headlining a contribution to a political party, which was in fact illegal, that it might make sense for somebody from the White House to call ITT and say, "What in the hell is all of this

business about making a contribution to the Republican Party." Would this not make sense?

Mr. GENEEN. It could happen that way because there were a lot of misstatements out there.

Senator Cook. And it would not quite be wrong for the White House to call somebody at ITT if this were going on and say, "What are you guys doing and do you not think you had better get yourselves straightened out?"

Mr. GENEEN. You may be right, Senator, but I have to say I do not know. I do not know anything about the phone call.

Senator Cook. But it would not seem unheard of and I am not sure that such a telephone call would constitute a crime if somebody made a call and inquired—

Senator TUNNEY. Would the Senator yield?

Senator Cook. I do not intend to yield. I have had this happen to me and I now return the favor.

It would not seem wrong, would it, if someone—as a matter of fact, it appeared in the *Hartford* papers way back at the time the first decision was made on the *Hartford* case, that \$400,000 was going to be given to the Republican Party, did it not?

Mr. GENEEN. Yes, it did.

Senator Cook. And that was over a year ago. So it would seem to me that such a call from the White House would not be unreasonable at all. What would you think?

Mr. GENEEN. Well, I agree with what you are saying, it would not be, but I keep coming back to what I know and I know there is no such commitment. Now, if somebody had gotten confused or gotten impressions from the newspapers or made a call or anything else I do not think they even believe it is real and the question is should we check it? Sure, we will check it.

Senator Cook. As a matter of fact, Mr. Geneen, I think it makes for a great deal of all kinds of editorial gimmickry when you read—we now have in the record a telegram from ITT to the San Diego bureau saying that there will be \$100,000 given, \$100,000 if it can be matched, the \$200,000 that have been before this committee now for over 10 days—and yet everything we have read, every reference that has been made, still continues to refer to \$400,000, \$600,000, and the \$200,000 figure has been totally and completely forgotten, the same as Dean Griswold's testimony has been forgotten, is that not correct?

Mr. GENEEN. It is almost a fair comment.

Senator Cook. I want to make one request of you, Mr. Geneen, because if we are going to ask whether a law firm in New York that the President of the United States was a former member of has in any way represented ITT or any of its subsidiaries, in all fairness to this committee, I want to know all of the law firms that have represented your corporation and your subsidiaries, I want to know the law firms in San Diego, in Los Angeles, in San Francisco, I want to know them in Boston, I want to know them in Louisville, if we are fortunate to have one, that have represented your company, but if we are going to pick on one law firm I want to know them all, and I want to know where some other people might be that we can make the same kind of inference, because if we are going to continue to inference this thing to death then I think we ought to have the whole record. I know this is going to be an arduous task on the part of your legal counsel, but I

think in all fairness to the committee we ought to have it, and if there are some other law firms that we can pick on when the time comes I think we ought to have that available to us.

Mr. GENEEN. We can get that.

Senator COOK. One other question, Mr. Geneen. The fact that you have not run down this rumor relative to the testimony, what law firm have you retained to run down all of the rumors that have flown around since the hearings have started, you might give that to us.

Thank you, Mr. Chairman.

Senator HART. We will not be able to close next Thursday now. [Laughter.]

Mr. GENEEN. There are more rumors than we have run down, I will add that, too.

Senator HART. Now, Mr. Geneen, I think, if I may take a few minutes, I could raise some questions which I believe are within the scope of both your responsibility and your knowledge.

What business factors go into the decision shall we settle or shall we fight, when you are faced with litigation?

As I understand it, in November of 1970 an offer of settlement was made to the Department, to Judge McLaren, which was not acceptable to the Department, is that right?

Mr. GENEEN. I believe that is correct. I think it was November or December.

Senator HART. I assume that that offer of settlement had the approval of ITT and yourself.

Mr. GENEEN. I think it had my approval and had it gone anywhere it would have then gone to our board. I do not think it was discussed with our board at that point nor was it a commitment.

Senator HART. The question would go to the board?

Mr. GENEEN. When we had something——

Senator HART. At the point of final approval or rejection?

Mr. GENEEN. When we had something realistic or attainable.

Senator HART. What were the terms of that November 1970 offer? Now, it may be in the record.

Mr. GENEEN. It probably is but I can only recall it at best. I think there was an offer in which we talked about Canteen because of 15 elements that were involved there. I think we talked about the insurance companies, this is my best memory, and I think we talked about the Levitt Co., domestic only, and I think when we were talking about Canteen this was without its financial subsidiaries and probably not including its form that was retail. Then I think it was supplemented in the discussion with Judge McLaren to include a portion of Grinnell, not the fire protection, is my memory of it, and there may have been some other minor details, and there was some talk about a decree and particularly about reciprocity and some actions that we would take to clarify to all our suppliers and everybody else our basic policy that we do not follow reciprocity. That is my best memory of it, Senator.

Senator HART. But in any event that proposal, while tentatively tendered to the Department, was not reviewed by your board of directors?

Mr. GENEEN. No. It was in the form of a proposal, and had it reached some kind of a conclusion we obviously would be both operating under the feeling of subjecting it to our board where it is re-

viewed. In our case we did not reach anything other than a discussion through our lawyers with the judge.

Senator HART. Then we come to the next—or am I correct—the next proposal was the one that resulted in the July 1971 consent decree?

Mr. GENEEN. Well, the best I can is to detail for you a little bit, Senator, and maybe it will be helpful. We started, let us say, our first proposal of any serious consequence, I think somewhere way back in—I think, Judge McLaren alluded to it, one of our people asked him something about it in a casual way and he said, “Well, you have got to get rid of Hartford,” and something else, but that was hardly a proposal but a passing comment. Then I think our legal counsel, Mr. Chaffetz, handling the *Canteen* case in Chicago, at some point had raised the subject with Mr. McLaren, I think particularly in relation to the suit, he was our trial lawyer for the *Canteen* case, and he had some discussion with Mr. McLaren about the *Canteen* case per se. But I think coming down to what you might say formal proposal, the November-December one which we just spoke of was the first one we had made and which was reviewed on a formal basis by Judge McLaren, and which resulted in disagreement on whether this was an adequate answer.

Now, that started in, somewhere around, November or December.

On December 31, the Grinnell findings from the district judge in Connecticut came down. As has been brought out, these were very strong on the lack of any factual support that an anticompetitive situation had been created.

I think you are familiar with this other area, Senator. He also came down fairly strong with language on the fact that there was no law to cover aggregate concentration and this type of thing. In fact, he would recommend if there was to be this kind of approach we go to Congress.

This would be around December 30. Now, the *Canteen* trial was going on, in my memory, December-January, and probably I would guess that Mr. McLaren would be thoroughly familiar with the trial by January-February, in that area, and would probably have a pretty good idea of what the results and findings and let me say the level of proof about the facts would be on that case also, and my guess is at that point he began to understand what his problems were going to be, in the sense that he had two cases which I think have been described, and Senator Cook referred to, by both him and Solicitor General Griswold as being cases basically without factual support to any anticompetitive situation.

Now, keeping forward with the timing of this thing I think a lot of us were tied up in a lawsuit for most of February and part of March, and then we came back and I think in rendering comment to our lawyer on this first proposal he had made a comment about what was so sacrosanct, if I can remember his words, about Hartford, and we felt it was desirable to make a presentation to him about what Hartford represented in the situation and, as I said this morning, he had been arguing, if you want to look at it in context, if you own Fire Protection Grinnell you could not own Hartford, and then reversing it, when you are arguing about Hartford, he said, “You cannot have Hartford because you have Fire Protection Grinnell.” As I have said this morning, that is a logical argument to exclude one or the other but not both, and I think our presentation in April made three things

clear, and, as I said in my opening statement, I think the most important thing that was made clear is the fact that voluntarily no board could vote any kind of a settlement that divested Hartford, first because of the cost to the company, and secondly, I would say because we felt it had some national interest problems which we presented, and I would say, third, if you want to look at it logically it was the major part of the three suits being sued on, two of which we had either very strong opinions or positions and we had not lost them. We had won the long injunction proceedings and since this was a pretty good foreshadowing of the trial, and nothing had changed, we felt pretty strong about that.

So, I think out of that hearing, or rather presentation is a better word, Mr. McLaren had to sit down and think about it, and I am perhaps assuming for him, and I do not mean to, but this would be my analysis, that he could not ask for both sides of that coin. He was either going to ask for Hartford and give up something else or ask for Fire Protection Grinnell and give up Hartford, and his idea was at the outset, I think he said somewhere in his testimony, he was not trying to run a punitive operation. Section 6, I think, is a civil action—I am not a lawyer—and his remedy is to recreate competition, not necessarily to fine us \$1 billion.

So, going down to the other side of the coin and saying these people cannot relinquish voluntarily because of the financial situation of Hartford and in turn if it does have some overshadowing balance of payments and other national interest problems, "I can solve my problem going down another route."

So, if you examine this, as I said this morning, what he did, as I look at the record and the facts as they emerge, he took all of Canteen, which is what he was suing for, he took all of Fire Protection Grinnell, which is the other side of the coin from Hartford, and that is all that was really substantially pressed in that lawsuit, and which our own trial lawyers had told us we would get even if we lost, in their opinion. This is, even if we should lose the *Grinnell* case, it would be remanded down to the district judge, that is all he would take because all he pressed was this anticompetitive, if he had facts even to support that, which he did not. And finally, he took Levitt, Avis and our two insurance companies, and having done that he removed all the factual and theoretical basis of his complaint against Hartford, and that, I think, is very clear and is apart from what Judge McLaren and Solicitor Griswold both testified to here; from my knowledge is the further fact—I am sorry I am talking so long, but I think it is important, Senator—the further fact that the District Judge Blumenfeld, who reviewed the entire settlement, there were some objections filed and he reviewed this, and in his findings he made it very clear he had studied it and he felt that the decree was carefully tailored to avoid, that is, vacated, if that is the right word, or solved, any of the anticompetitive questions or allegations that had been made by the Justice Department in their original suits, and that meaning that having deprived us of all these other things he no longer had a case against Hartford, and I think he went on in that same opinion to commend the Government on the settlement they had achieved.

Now, that is long but I think it gives you a better sequence than if I just throw pieces at you.

Senator HART. Would you then give us, to the committee, a copy of the first formal proposal for settlement, the one of November-December 1970?

Mr. GENEEN. I would be glad to.

Senator HART. It has been suggested that that offer was not substantially different from the decree eventually agreed upon.

Mr. GENEEN. I do not think—excuse me.

Senator HART. And I think that it would be helpful for everyone if we had that document in the record.

Now, having refreshed your recollection by that answer, can you tell me what aspect of the ultimate settlement was the most burdensome to you, or the least attractive, from your own point of view?

Mr. GENEEN. The ultimate settlement?

Senator Hart. Yes.

Mr. GENEEN. Well, I am giving you my opinion, Senator, I never really felt, and I think the court cases bore this out, that we were indulging in any anticompetitive practices and I think I have said before we made these acquisitions we had very carefully checked them out with very competent antitrust counsel, not one firm but two or three, and in addition, we had even retained Mr. Donald Turner, who was the last antitrust Assistant Attorney General, who gave us a very clear feeling about the law and I think, as I said in our opening statement, that I recognize there was very strong cleavage between people who wanted to try to develop new law by what I call a short cut method and those who felt if we wanted new law you should go to your committee, for example, in the Congress, and I think Donald Turner was, as you remember, very strong in his views, but in any event, most important in our mind, there was no factual support for the idea we were creating an anticompetitive situation, and so we were finally faced with the question, given two cases which I think have been brought out here very clearly, where there was no factual support for an anticompetitive situation, what premise, you know, would you then intend to find in antitrust law?

If I may digress for just 2 minutes, I would like to point out something here, Senator, that I do not think anybody ever seems to appreciate.

The last revision of the Celler-Kefauver Act was way back in 1950, and I do not think people can remember that well but in those days there was no Common Market, we had, I think about \$24 billion in gold in the bank and we owed about 12, so we were quite solvent, we were the world's leading military power, we were the world's greatest trading power, and we were the world's greatest currency, if you want. We had very favorable balances of payments and were spending our time picking up the rest of Europe and Japan, who tradewise were on their back.

Now 1972, or 1971, if you will, we owe \$45 billion, and there is a Common Market. We have \$11 billion in the bank, we are no longer solvent in that sense. We are no longer the predominant trading country in the world. We have many, many other kinds of problems, and I think it is almost unbelievable that anybody can sit down, and given two cases where there were no anticompetitive aspects at all, start trying to interpret from that what Congress meant in 1950 under certain of these conditions as against today, and I do not know whether

this seems overvoluminous but in my mind that is a very, very serious question as to whether that kind of approach made any sense.

So, coming back to Mr. McLaren's problem this is what he was faced with, plus 2½ years of litigation, plus strategy which he had to take all three cases up at once, which did not work out.

Senator HART. I know how strongly you feel about this. I do not quarrel with the sincerity of your views. But to return to my question. There was a formal offer, the first formal offer of settlement was made in late 1970, and a copy of that you will furnish to us?

Mr. GENEEN. Right.

Senator HART. The settlement eventually was agreed upon in the summer of 1971?

Mr. GENEEN. Right.

Senator HART. And the terms of that are public and available.

Now, is it your belief, and perhaps it would be evident when we see the two side by side, that there is a difference between the first formal offer and the settlement that was concluded 6 or 7 months later?

Mr. GENEEN. I think there is a substantial difference, Senator, and we can show it to you.

Senator HART. And with respect to that final settlement, what was the toughest thing for you to swallow?

Mr. GENEEN. I guess the whole principle of——

Senator HART. I understand. You thought it was wrong to begin with.

Mr. GENEEN. That is right.

Senator HART. Wrong at every point; but what was the toughest feature of that final medicine which you were compelled to take, as you would describe it?

Mr. GENEEN. Well, let me say it has not even been talked about here because we have been talking about companies and cases. We have a very tough decree on our hands which for 10 years limits us very severely in what we can do. In many ways you can say that is a very tough answer because we have undertaken to divest the companies that were called for and converted them into cash and presumably pay them either to our stockholders or reinvest it, but basically the 10-year story will stay with us for 10 years.

Senator HART. Do you recall whether that feature, the prohibition on acquisitions for the next 10 years except under a certain scale, was a portion of the first formal offer?

Mr. GENEEN. Senator, I do not want to get into areas that I cannot remember well.

Senator HART. We will wait until we get them.

Mr. GENEEN. But what I want to say is this. In addition to additional assets and sales involved in the final one let me tell you assuredly that the final decree was much tougher than the one on the proposal in November-December, but I think the best answer to that, sir, is to put it down so you can see it.

Senator HART. I agree.

Mr. GENEEN. And we will be glad to do it.

Senator HART. The Senator from Massachusetts.

Senator KENNEDY. Mr. Geneen, you can probably understand some of the confusion that we have as members of the committee about the dollar figure that Mrs. Beard did refer to, \$600,000, as

Senator Tunney mentioned, and as indicated in these transcripts. I know you have indicated and testified that the figure was \$100,000, with an additional \$100,000.

Mr. GENEEN. Yes.

Senator KENNEDY. Last week's Washington Star cites an August 5, 1971 joint announcement of Leon Parma and Bob Wilson, using the \$400,000 figure. Then there was a press conference statement by Republican National Chairman, Senator Dole, just 2 days ago, Friday, in which he used a \$400,000 figure, and Mr. Wilson also reiterated the \$400,000 figure in the San Diego Tribune the first week of March. So, he certainly has been involved in the whole deal, and they are off by approximately a hundred percent. Is there any way you can help us on why that is so?

Mr. GENEEN. Let me say, Senator, I am equally confused and I think the action we took, which was the fortunate one to be taken in view of all this, was to put our offer in writing at the time we did and specified exactly what it was and it was purposely to stop all this nonsense but strangely enough, even having done that it keeps going on. I can assure you there is no basis beyond that amount.

Senator KENNEDY. Could the reason it keeps going on be because this \$400,000 figure was discussed or talked about, or \$600,000?

Mr. GENEEN. I do not ever remember a figure of \$600,000 and I do not remember a figure of \$400,000. Back in May when we were talking, they were talking, this was a casual conversation at Denver as I described it, and there was some talk about trade and use of rooms and, as I said, somewhere, in one of the inquiries that were raised, a hotel figures buying advertising on due bills, for example, 30 percent of the face value was its cost, but none of these represented in our mind commitments and none of them represented pledges. These are the words which have been used and in my mind if we were committed we certainly would not have been able to write the telegram in the way we did and the amounts we did, so we have absolutely no question in submitting that report, I mean, that telegram, as exactly what we did because it represented what Sheraton felt they could afford to do.

I think I mentioned this morning that it was and is a good business investment for them on that basis.

Senator KENNEDY. Who carried on these negotiations after May 12?

Mr. GENEEN. Well, there were no negotiations so far as I was concerned. It was a casual conversation, as I said, that night and this was in the environment of a dinner party in which there was no assurance or expectancy or anything else about where the convention would be or what it would be. It was a question, "Would you fellows support it if we had to get it to San Diego", and we said, "Sure, we have three hotels including a new one and it would be very much of interest to us," and that is basically all the conversation we had plus some rough thoughts about what kind of trade they could do. And when we finally boiled it down and made our commitment—

Senator KENNEDY. This is what I mean, when you say, "We finally"—

Mr. GENEEN. I am talking about the company, when it finally boiled it down.

Senator KENNEDY. Who in the company was doing the boiling down?

Mr. GENEEN. It was Sheraton's final decision.

Senator KENNEDY. Who in that company?

Mr. GENEEN. Bud James, his final decision of what he can afford to do, and I think he will tell you today, if you asked him, it was a good thing.

Senator KENNEDY. Who was he negotiating with?

Mr. GENEEN. He was not negotiating with anybody, to my knowledge.

Senator KENNEDY. He talked to——

Mr. GENEEN. No, he sent a telegram, that is, Sheraton sent a telegram, to the San Diego Convention and Tourist Bureau.

Senator KENNEDY. Then the only conversations that took place after May 12 were just between you and Bud James?

Mr. GENEEN. I do not know, there may have been other conversations but you are asking what the commitment of the company was.

Senator KENNEDY. That is right. Did you ask Mr. James whether there were other conversations?

Mr. GENEEN. No; I have not asked him but I think before we sent the telegram this is what our commitment was.

Senator KENNEDY. So, you do not know whether Mr. James may have mentioned other figures?

Mr. GENEEN. I do not believe he did.

Senator KENNEDY. Have you ever talked to him about it?

Mr. GENEEN. I do not remember ever asking him that question.

Senator KENNEDY. Well, I mean, you would remember it if you did?

Mr. GENEEN. I do not remember; it is over a period of time.

Senator KENNEDY. You have a great reputation, and deservedly so, for keeping facts and figures in mind.

Mr. GENEEN. Well, I can keep the central fact in mind that is the key thing, this is the only commitment made, made by James on July 21, which is a matter of record before the site selection and as a matter of interest that you seem to want to link this before our settlement.

Senator KENNEDY. Would you have been surprised if there had been a call from the White House to Mr. Merriam about \$200,000?

Mr. GENEEN. No, I would not because—let me think now—no, I cannot place the date of it but I would have been as surprised until we had made a figure out that was clear. If there had been a call about it after we put our telegram out, no.

Senator KENNEDY. If it had been before?

Mr. GENEEN. Well, if it had been before it gets into the area of what was the \$200,000, the question was in the area of "Are you people thinking of supporting the San Diego Convention Bureau in figures up to \$200,000?" it would not have surprised me. It would not necessarily have represented a commitment, either. But as Senator Tunney brought out, "Are you fellows thinking of donating \$200,000," it would damn well have surprised me.

Senator KENNEDY. It would not have surprised you if that call had come from the White House in June, late June?

Mr. GENEEN. Well, let me say you are talking about a \$600,000 call and I would be surprised at any time.

Senator KENNEDY. So, if it was \$200,000?

Mr. GENEEN. Well, I do not know. Let me say as far as I knew there was no particular connection with the White House. We talked about supporting the convention out there.

Senator KENNEDY. I say——

Mr. GENEEN. Let me finish, sir, and we had seen all kinds of publicity in the newspapers, as Senator Cook has brought out, and I would have to say I was not surprised at anything at that point.

Senator KENNEDY. This would have been in June, this telephone call that Mrs. Beard refers to. Your telegram was in July, was it not?

Mr. GENEEN. That is correct.

Senator KENNEDY. So they would have—if the call did take place and if the figures, say, Mrs. Beard mentioned \$600,000, if the figure had been \$200,000, it would not have surprised you?

Mr. GENEEN. Well, let me say I would not know what the basis of it was because the only discussion I had was with Congressman Wilson and the only telegram we sent was to the Bureau, and I presume that was the only people who would be able to make any statement.

Senator KENNEDY. Out at the May meeting, did anyone mention to you that the Sheraton was going to be used as Presidential headquarters?

Mr. GENEEN. Well, the theory was when we talked about it if we were going to support it we had a brand new hotel and we would support it on the basis that we had the Presidential headquarters. We did not say——

Senator KENNEDY. Who gave you assurance that it would be?

Mr. GENEEN. We did not have any assurance. We sent a telegram which was conditioned on it.

Senator KENNEDY. It was conditioned on it?

Mr. GENEEN. That is correct.

Senator KENNEDY. Did you have reason to believe prior to the time you sent the telegram that it would be?

Mr. GENEEN. Well, we had the largest and newest hotel in town and we thought——

Senator KENNEDY. Did you have any other assurances?

Mr. GENEEN. I did not have any.

Senator KENNEDY. Did anyone in ITT have any?

Mr. GENEEN. I do not think we had any assurances and that is why we conditioned it on it. The idea was fine if we were going to support it to that extent, that is what we wanted to have.

Senator KENNEDY. Do you know whether anyone in ITT had conversations?

Mr. GENEEN. No; I do not know of any specific conversations on it except this is what they wanted.

Senator KENNEDY. Would you have known if ITT-Sheraton had assurances it was going to be Presidential headquarters prior to the time the telegram was sent?

Mr. GENEEN. I think when we sent the telegram it was not even assured it would be in San Diego. This was a bid as part of a community effort to bring the convention there. The decision had not even been made to bring it there.

Senator KENNEDY. You are suggesting that those negotiations had not been worked out prior to the time that you sent the telegram?

Mr. GENEEN. I did not work any negotiations out.

Senator KENNEDY. I mean your company.

Mr. GENEEN. Well, I do not know of any negotiations that were worked out.

Senator KENNEDY. Moving on, because we are short on time, we have received a number of releases from ITT. The first one goes back to August. This is in your August 12 release:

Mr. Geneen has never participated, either on that date or subsequent to it, in any negotiations with the Justice Department regarding its antitrust cases.

And then later, on March 13, we have a spokesman [reading]:

The spokesman said that Mr. Geneen felt that changes in antitrust law should be made in Congress where hearings on all aspects of the national interest could be held before new legislation was enacted.

Then, it listed the people to whom, according to the spokesman, Mr. Geneen presented his views on administration policy and included Congressman Wilson.

Then you submitted to the committee last week, March 24, the list of approximate dates that you talked with these people about antitrust policy.

Then today we get this list, schedule A. Looking down at Bob Wilson, we have gone all the way from the point where there were no contacts on antitrust policy, antitrust cases, to where there were high contacts made about antitrust policy, indicating, for example, Congressman Wilson, and then on the list you provided here, under Bob Wilson, "Review of Speech on Modular Housing" and "personal fishing trip"—

Mr. GENEEN. That is correct.

Senator KENNEDY (continuing). As being the matters they were talking about.

Mr. GENEEN. That is correct.

Senator KENNEDY. Why did you put down there on March 13 that you talked to him about antitrust policy?

Mr. GENEEN. I do not think it is that specific. That was a general release at the time and the question was, Who had I talked to in Washington, and it was prepared as best anybody had any knowledge at that time—put out—and I do not recall talking to Congressman Wilson about antitrust policy, and I know I did not talk to him on that date of June 24, I think it is. In fact, what I did talk to him about was precisely that. He was up in New York, he called up and asked me to come—he was giving a speech on some kind of modular housing and he had invited me on a fishing trip when I was out there once and I said I could not go out again but if I could go he would come up and arrange another trip.

Senator KENNEDY. What refreshed your recollection from your release of March 13? It says you talked to him about antitrust policy, and today this list says you talked to him about fishing?

Mr. GENEEN. If that is the case the release is wrong, because I did not talk to him about antitrust policy.

Senator KENNEDY. Could we talk just—I am looking over at Marlow there.

Senator HART. Ten minutes.

Senator COOK. Mr. Geneen, relative to—and I told Mr. Tunney that I was going to remind him of this even if he were not here and he said it was perfectly all right—relative to Senator Kennedy's remarks about Senator Dole talking about \$400,000 and someone else talking about \$400,000, I wanted to remind Senator Tunney, which I did do, that he spent a half hour on television last week on

the "Elizabeth Drew Show" and talked about \$400,000 during the entire show, and, yet, one of the first exhibits that you submitted to the committee when they started was the telegram showing the commitment was \$100,000 to the San Diego Convention Bureau and another \$100,000 if it were matched. So, not only did apparently Senator Dole make the mistake but the junior Senator from California made the same mistake for 30 minutes on television.

You said——

Senator KENNEDY. Will the Senator yield? Since you are referring to Senator Tunney and he is not here——

Senator COOK. I told him that I was going to do this and he said that was all right and he said, as a matter of fact, if in fact he had done that, that I should have said it. So, I would want my colleagues to know that I would not make a remark about a Senator if he were not here to defend himself and I did say it to the Senator before he left and he wished me a Happy Easter. [Laughter.]

Mr. Geneen——

Senator KENNEDY. Are you going to include me on that?

Senator COOK. You can include all the names, for heaven's sake. May I suggest I got cut off by the Senator this morning.

Senator KENNEDY. I yielded after the question, after my questions.

Senator COOK. Mr. Geneen, you said that you retained Mr. Donald Turner. Do you know anything about Mr. Donald Turner's background?

Mr. GENEEN. A little bit, not probably enough to give you a complete answer. Donald Turner is a professor or dean of law at Harvard, and he is also, I believe, a recognized economist and recognized as an expert in that field as well. So he is both an expert in antitrust law and an economist.

Senator COOK. Did he ever have a position with the Justice Department?

Mr. GENEEN. Yes, he was the Assistant Attorney General in charge of antitrust in the last administration. I think, up until near the close at which time he was replaced by Mr. Zimmerman and I do not remember his first name.

Senator COOK. Do you recall approximately when he came into the previous administration as head of the Antitrust Division?

Mr. GENEEN. I believe he came in at the beginning of the administration.

Senator COOK. Do you have any opinions or do you have any memorandums that he may have prepared for you relative to the pending cases of ITT, of the United States versus ITT?

Mr. GENEEN. I think the principal case that we consulted him on was *Hartford*, and I am not sure what opinions we got and that would be in the hands of our legal department.

Senator COOK. Have you had personal conversations with Mr. Turner relative to these cases?

Mr. GENEEN. I had personal conversations with him relative to *Hartford*. I do not recall whether I talked to him about the other cases, but I know what his philosophy was and, it was basically that unless you had an anticompetitive situation that there was no basis for pursuing so-called bigness per se, that if there was to be a major change in our antitrust law of that sweeping scope it had to go through

Congress, and I think he is on record in several speeches on exactly this point.

Senator COOK. Would you enlarge what did he say to you relative to the Justice Department's position in regard to the *Hartford* case with the knowledge that he had been the former head of the Antitrust Division of the Justice Department; what was his basic philosophy?

Mr. GILBERT. Excuse me, you are asking questions with respect to discussions with Mr. Turner after he was out of the Government?

Senator COOK. Oh, yes.

Mr. GENEEN. Well, I am not the best one to characterize the legal values or how he stated them. Generally speaking, his comment was that there was no basis for an antitrust suit in our *Hartford* acquisition, and I would have to rely on counsel but I think his philosophy would have covered the others, always assuming there were no anticompetitive aspects that were not apparent from the nature of the company in the industries.

Senator COOK. And do you consider him to be quite an expert in the field?

Mr. GENEEN. I said he is not only considered an expert in the field of antitrust, he is also an expert in the field of economics and so recognized.

Senator COOK. To clear up one other point, when your telegram was sent to San Diego, and you advised San Diego, the San Diego Convention and Visitors Bureau, of the commitment of ITT, the convention had not been designated as going to be held in San Diego, had it?

Mr. GENEEN. No, as I said this was prior to the site selection.

Senator COOK. So, therefore, the question really would have been moot if a community other than San Diego had been selected?

Mr. GENEEN. It certainly would have.

Senator COOK. Let me ask you one other question. Also in your telegram it stated specifically that this commitment would be made if, and I have forgotten which Sheraton——

Mr. GENEEN. The new hotel, if you are talking about the presidential headquarters by chance.

Senator COOK. Yes.

Mr. GENEEN. Yes. It would be our new hotel.

Mr. GILBERT. It is referred to in the telegram, as Sheraton Harbor Island.

Senator COOK. It also said your offer was contingent on the fact that the Sheraton Harbor Island would be the presidential headquarters?

Mr. GENEEN. That is correct.

Senator COOK. If the Sheraton Harbor Island Hotel is not the headquarters, the presidential headquarters, will you consider that the offer that ITT made to the Convention Bureau has been breached and ask for return of your money?

Mr. GENEEN. Well, no one has told us it is not going to be the headquarters, and let me say our commitment is conditioned on it being the headquarters, and I think if anybody told us this we would go back to Mr. James and have him reevaluate his problem. In my own mind it would be breached.

Senator COOK. And if it were, in fact, breached and they picked a hotel, well, let us say that is a Hilton Hotel or let us say there is——

Mr. GENEEN. Particularly the Hilton.

Senator COOK. What?

Mr. GENEEN. Particularly the Hilton.

Senator COOK. All right. Suppose that occurs, would you consider that your offer has been breached and ask for a refund of the sums that have been paid into the Convention Bureau?

Mr. GENEEN. I think we would go back to Mr. James and the Sheraton Hotel chain and ask him what he felt his offer should be at that time, and I think he would make a decision because he did do some economic calculation of what this was worth to him. If you wanted my personal opinion, I would consider it breached and I would consider it no longer the offer we made.

Senator COOK. Thank you, Mr. Geneen.

Senator HART. The Senator from Massachusetts.

Mr. KENNEDY. You indicated that you would have offered this to the Democrats as well as to the Republicans. Since they do not have a President, who is supposed to stay there? [Laughter.]

Mr. GENEEN. I think I can answer you, Senator. I believe you have so many candidates we would have about six headquarters in town and we might do better. [Laughter.]

Senator HART. The committee agreed to adjourn at 4 p.m. Before doing that, at the direction of the chairman and unless there is objection, I will place in the record documents more fully identified in a staff memorandum here. They involve affidavits, letters, memorandums, and so on submitted to the committee.

(The material referred to follows:)

ITT PRESS RELEASE, MARCH 20, 1972, AND ATTACHED MATERIAL
SUBMITTED TO THE COMMITTEE

Washington, D.C., March 20—International Telephone and Telegraph Corporation announced today that it has turned over to the Senate Judiciary Committee important new evidence indicating that the so-called Beard memorandum of Mr. Jack Anderson was a fraud.

The evidence includes an affidavit from Mrs. Susan Lichtman, who was Mrs. Beard's secretary on June 25, 1971. In her sworn statement, Mrs. Lichtman says that she did type a memorandum containing portions of the Anderson memorandum but that it did not include any references to the supposed connection between the settlement of the ITT antitrust cases and the San Diego Convention. In fact, she said, there was no reference at all to the antitrust cases.

An ITT spokesman pointed out that these are the critical aspects of the Anderson memorandum, and that Mrs. Lichtman's affidavit substantially supports Mrs. Beard's recent statement that the Anderson memorandum includes significant material which was not in the memorandum written by her.

Mrs. Lichtman's affidavit is supported by an affidavit of Russel J. Tagliareni, an ITT security official, who points out that Mrs. Lichtman made substantially the same statements to him on March 2, 1972, at a time when she was unaware of the Anderson charge of Mrs. Beard's response thereto.

Further evidence submitted to the Committee includes a recently discovered memorandum written by Mrs. Beard dated June 25, 1971,—the very day the so-called Anderson memorandum purports to have been written. The genuine Beard memorandum is inconsistent with the Anderson memorandum.

An affidavit of Mr. William Merriam, vice president of ITT Washington, has also been submitted to the Senate Judiciary Committee. It states that he had never reviewed the Anderson memorandum but that the genuine Beard memorandum was received by him in the ordinary course. The genuine Beard memorandum makes only the following reference to the San Diego Convention:

"The negotiations for the 1972 convention being held on ITT properties in San Diego have been wholly my responsibility. If this possibility becomes fact, it obviously means unbuyable publicity for ITT."

As Mr. Merriam's affidavit points out, the genuine Beard memorandum clearly demonstrates that on June 25, 1971, it was uncertain and questionable whether the

Republican Convention would be held in San Diego and if so whether it would be obtained for the Shertan hotel in San Diego. Under the circumstances there could have been on that day no "deal" in which Mrs. Beard was involved for the Republican Convention to come to San Diego or for ITT antitrust suits to be settled on that basis.

Mr. Merriam's affidavit further points out:

"This memorandum also directly corroborates the testimony of Harold S. Geneen, chairman and president of ITT, before the Committee that ITT's purpose in making the pledge to the San Diego Convention and Tourist Bureau was to obtain the 'unbuyable publicity' for ITT that would result if its new hotel was to serve as convention headquarters."

The various affidavits also contain important other evidence indicating that the Anderson memorandum is false.

The spokesman added that it had been informed that Mr. Anderson, having difficulty substantiating his charges with respect to the San Diego Convention, is now planning to attack ITT on completely collateral and extraneous matters. The spokesman said ITT will deal with Mr. Anderson's new charges as soon as Mr. Anderson admits the true facts relating to his earlier charges which have caused such unwarranted attacks on ITT and numerous responsible officials.

AFFIDAVIT, MARCH 18, 1972

PROVINCE OF ONTARIO,
Judicial District of York, to Wit:

I, Susan Lichtman, presently residing at the city of Toronto, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am a United States citizen presently residing in Toronto, Canada. I took up residence in Canada in July, 1967, and have lived in Canada since that time, except for the period of April, 1971, through August 7, 1971.

2. I am a graduate of Wakefield High School, Arlington, Virginia, and have completed a total of three college years at Mary Washington College of the University of Virginia and the George Washington University. I am presently finishing my college education at the University of Toronto.

3. Following my graduation from high school in 1963 I held a number of jobs in Washington, D.C. During the years 1965 and 1966 I served as administrative assistant for the Dean for Sponsored Research at the George Washington University. From September, 1966, through January, 1967, I served as the receptionist to the Director of the Peace Corps. My employment at the George Washington University and at the Peace Corps required my obtaining secret security clearance from the United States Government. I returned to the George Washington University in February, 1967, to serve as the secretary to the Director of the Washington Integrated Secondary Education Project.

4. In July, 1967, with my husband, I went to Canada. Since taking up residence in Canada, I have been the secretary to the Director of an engineering project at McMaster University, a dental assistant to a Toronto dental surgeon, and a volunteer worker with nursery school children. Up to April, 1971, I worked toward my nursery school certificate at the University of Toronto, and during the last few months I have been engaged as a supervisor of nursery school children in local Y.M.C.As.

5. I worked in the International Telephone and Telegraph Corporation Washington office during the period from May 24, 1971, through about July 14, 1971. I obtained my employment through the Staff Builders Inc. temporary employment agency located in Washington, D.C. I left the Company of my own accord on July 14, 1971, in order to return to Toronto, Canada.

6. During my employment at ITT I worked for Mrs. Dita Beard and other persons at that office. I worked essentially in a secretarial capacity, performing such functions as typing, filing and the like. My principal responsibility, however, was to provide secretarial assistance to Mrs. Dita Beard.

7. It was my practice to carefully read and proof read letters and memoranda which I typed. I do not recall typing many memoranda for Mrs. Beard, but when I did her style was informal but lively. It was not her practice to dictate memoranda to me but rather to give me a draft of a memorandum which she herself typed and wanted me to re-type. She left it to me to supply where necessary punctuation and to correct typographical errors. When I typed a draft memorandum previously typed by Mrs. Beard, I usually read her draft quite carefully and after I had finished typing it, proof read it for accuracy. I would have taken particular care of such details in connection with a memorandum addressed to Mr. Merriam, since he was the head of ITT's Washington office.

8. I do recall typing during my employment a memorandum having to do with the San Diego Convention. I do not recall the date when I typed such a memorandum. I did work on June 25, 1971. I might have typed such a memorandum on that date, although I am not sure.

9. I have carefully examined and re-examined the attached copy of a memorandum dated June 25, 1971 and do not recognize it as a memorandum which I typed. To the best of my knowledge and belief, I am sure that had I typed the attached memorandum, I would have remembered the sentences which I have bracketed and initialled because of the implications contained in them. To the best of my knowledge and belief, the memorandum which I typed on the San Diego Convention did not contain the sentences which I have bracketed on the attached copy. I definitely recall typing a memorandum containing some of the passages in the first and second paragraphs and the first part of the third paragraph on page 1 of the attached copy.

10. At no time during my employment with ITT did I ever receive the impression of any "deal" concerning the San Diego Convention or any relationship or connection whatever between the Convention and the antitrust lawsuits involving the Company. Being, I believe, a trusted employee and working at a small office in which there was frequent interchange among the employees during the period of my employment, I believe that had there been any deal or connection, I would have had an inkling about it.

11. I have made this affidavit voluntarily and affirm that all the statements contained in it are true to the best of my knowledge.

SUSAN LICHTMAN.

Affirmed before me at the City of Toronto, in the Municipality of Metropolitan Toronto, this 18th day of March, 1972.

A Commissioner

AFFIDAVIT, MARCH 20, 1972

DISTRICT OF COLUMBIA, ss:

I, Russell J. Tagliareni, being duly sworn, depose and say:

1. I am, and have been since July 1969, employed as Security Administrator for International Telephone and Telegraph Corporation. Prior to that time, I had been for fourteen years a Special Agent for the Federal Bureau of Investigation.

2. I have read the affidavit of Susan Lichtman sworn to March 18, 1972. The statements made in paragraphs numbered 7, 8 and 9 are substantially the same as the statements which she made to me during an interview I had with her in Toronto, Canada on March 2, 1972.

3. When I met with Mrs. Lichtman on March 2, 1972, she said she was unaware of the news stories regarding ITT, Mrs. Dita Beard, and a certain memorandum dated June 25, 1971. I showed her a copy of that memorandum, which was identical to the copy annexed to her affidavit. After reading the copy, she stated that she remembered typing a memorandum on the San Diego Convention for Mrs. Beard and that the copy she had just read contained passages in the first, second and third paragraphs on page one which she believed were in the memorandum she typed. She said that to the best of her knowledge and recollection the memorandum she typed did not contain the sentences linking the San Diego Convention to the negotiations on the mergers; the President telling "Mitchell to see that things are worked out fairly"; "McLaren's mickey mouse"; and "Hal and his big mouth". I asked her how she could recall that those sentences were not in the memorandum she typed. She stated that she read very carefully memoranda which she typed, and that because of the moral implications involved, she would have reacted to those sentences and discussed them with Mrs. Beard. She said that she frequently engaged in political discussions with Mrs. Beard and they frequently disagreed on matters of politics.

4. I made no deals or promises of consideration of any kind in connection with my interviews of Mrs. Susan Lichtman. She gave me her statement as to the facts voluntarily.

RUSSELL J. TAGLIARENI.

Dated March 20, 1972; Sworn to before me this 20th day of March 1972.
My Commission Expires August 31, 1975.

*Washington Office
1707 L Street, N.W.
Washington, D.C. 20036
Tel. (202) 296-6000
Date: June 25, 1971*

ITT

To: W.R. Merriam.

From: D.D. Beard.

I have been working at the very highest levels of this Administration on many, many problems that have beset ITT. This requires hours and hours of my time because I am never sure when I am going to be called by Members of Congress or the Executive Branch to answer questions and help in negotiations with agencies and departments.

I have recently been heavily involved with Sheraton and the new ITT Cable Hydrospace Division problems on the West Coast, requiring limitless numbers of phone calls, mostly from home at night, because of the three hour differential.

The Cable Division in San Diego is an excellent example of hours spent by me, night and day. Our new Division requires constant touch with the Department of Defense on contracting for cable in a top secret program, plus constant contact with the Congressmen of that area, plus the Governor of California and his staff.

There are many times during the day that members of our staff here require my help on making appointments with Members of Congress who are close friends of mine, but who are difficult to approach as a stranger.

Besides the trouble-shooting type of work I've been doing, most of my contacts with the Hill have to be kept up during the luncheon hour or in the evenings. This also includes contacts with Governors of the many states in which ITT has divisions or properties.

The negotiations for the '72 Convention being held on ITT properties in San Diego, have been wholly my responsibility. If this possibility becomes fact, it obviously means unbuyable publicity for ITT.

ITT

*because I like
uncertainty I will be
the person*

Washington Office

1707 L Street, N.W.
Washington, D.C. 20036
Tel. (202) 296-6000

To: W. B. Merriam

Date: June 25, 1971

From: D. D. BeardSubject: This Convention

many
~~I have been working~~ at the very highest levels of this Administration on many, many problems that have beset ITT. This requires ~~hours~~ and hours of ~~my~~ time because I am never sure when I am going to be called by Members of Congress or the Executive Branch to answer questions and help in negotiations with agencies and departments.

this included because involved
~~I have recently been heavily~~ involved with Sheraton and the new ITT Cable Hydrospace Division problems on the West Coast, requiring limitless numbers of phone calls, ~~mostly~~ from home at night, because of the three hour differential. *included in rising*

The Cable Division in San Diego is an excellent example of hours spent ~~hour~~ night and day. Our new Division requires constant touch with the Department of Defense on contracting for cable in a top secret program, plus constant contact with the Congressmen of that area, plus the Governor of California and his staff.

There are many times during the day that members of our staff here require ~~my~~ help on making appointments with Members of Congress who are close friends of ~~me~~, but who are difficult to approach as a stranger.

other
Besides the trouble-shooting type of work ~~I've been doing~~, most of ~~my~~ contacts with the Hill have to be kept up during the luncheon hour or in the evenings. This also includes contacts with Governors of the many states in which ITT has divisions or properties.

a single
The negotiations for the '72 Convention being held on ITT properties in San Diego have been ~~wholly my~~ responsibility. If ~~this possibility~~ becomes fact, it obviously means ~~unbuyable publicity for ITT~~.

AFFIDAVIT, MARCH 20, 1972

DISTRICT OF COLUMBIA, ss:

William R. Merriam, being duly sworn, deposes and says:

1. I am Vice President and in charge of the Washington, D.C. office of the International Telephone and Telegraph Corporation.

2. I have examined a copy of a memorandum purportedly written to me by D.D. Beard, dated June 25, 1971, the original of which has been admitted into the record of these proceedings. I did not receive this alleged memorandum from Mrs. Beard on June 25, 1971, or at any other time. The first time I ever saw this memorandum was on Wednesday, February 23, 1972, when Brit Hume gave a copy of it to members of my staff. Having read this memorandum, I am certain that had I ever seen it before, I would not have forgotten it. After Mr. Hume produced this alleged memorandum from Mrs. Beard to me, a complete search of our files was made and no copy of that memorandum was found.

3. Within the past two days we have discovered a memorandum from Mrs. Beard to me dated June 25, 1971. This is the same date as the alleged "Beard memorandum" produced by Mr. Anderson. The memorandum that I did receive made absolutely no reference to the antitrust cases. In that memorandum, Mrs. Beard outlined the matters she had been handling and stated:

"The negotiations for the 1972 convention being held on ITT properties in San Diego have been wholly my responsibility. If this possibility becomes fact, it obviously means unbuyable publicity for ITT."

The first thing that should be noted is that this memorandum of June 25, 1971, talks of the "possibility" of the convention being held in San Diego and thus flatly contradicts the allegations that prior to this date a deal had been made of bringing the Convention to San Diego and to settle the antitrust cases in return for ITT's support of the Convention. This memorandum also directly corroborates the testimony of Mr. Geneen that ITT's purpose in making the pledge to the San Diego Convention and Tourist Bureau was to obtain the "unbuyable publicity for ITT" that would result if its new hotel was to serve as the Presidential headquarters. Finally, the fact that on June 25, 1971, the exact date of the alleged memorandum that Mr. Anderson produced, I did receive a memorandum from Mrs. Beard which made no reference to any connection between the San Diego convention and the antitrust settlement casts serious doubt on the authenticity of the Anderson memorandum dated June 25, 1971, which attempts to link these two unrelated events.

4. I also state unequivocally that I know of nothing that would substantiate the claim that Mrs. Beard had any role in the negotiations leading to the settlement of the ITT antitrust cases, and I know of no relations whatsoever between that settlement and ITT Sheraton's pledge to the San Diego Tourist and Convention Bureau in connection with that Bureau's effort to bring the Republican National Convention to San Diego.

5. Insofar as Mrs. Beard's trip to the Kentucky Derby in 1971 is concerned, I know only that Mrs. Beard went to the Derby, as she had in each of the past several years, and that when she returned she mentioned that she had met Mr. Mitchell. Mrs. Beard never told me of any conversation with Attorney General Mitchell involving the settlement of the antitrust cases. Had the Attorney General discussed the settlement of the antitrust cases with Mrs. Beard, it is inconceivable that she would not have conveyed this information to me.

6. On December 28, 1971, I wrote an end-of-the-year letter to Mrs. Beard. That letter begins:

"Despite our office having its best year ever, I am sure that you feel that the year 1971 was a frustrating one."

That was my assessment of her work at that time and it is of course completely inconsistent with Mr. Anderson's version of Mrs. Beard's role in the settlement of the antitrust case. Had Mrs. Beard effected the "coup" alleged by Anderson of settling the antitrust cases, 1971 certainly would not have been a "frustrating" year for Mrs. Beard.

Finally, with regard to Mrs. Beard's health, my December 28, 1971, letter to her stated:

"I am most appreciative of all you have done, but I want to caution you about your health. You have just got to take it easier because you are not worth much to me when you are in the hospital! Keeping well is a matter of discipline,

and between you and me, that's something you don't have a lot of. Mother Beard is getting too old to stay up all night, and while you hate to admit it, it's true."

WILLIAM R. MERRIAM.

Sworn to before this 20th day of March, 1972.

My Commission Expires August 31, 1975.

DECEMBER 28, 1971.

Mrs. DITA D. BEARD,
Arlington, Va.

DEAR DITA. Despite our office having its best year ever, I am sure you feel the year 1971 was a frustrating one. However, you must remember that you were facing tremendous odds and it also should be a lesson that no one or two people—no matter how friendly or how strong—can turn this government around.

I am most appreciative of all you have done, but I want to caution you about your health. You have just got to take it easier because you are not worth much to me when you are in the hospital. Keeping well is a matter of discipline, and between you and me, that's something you don't have a lot of. Mother Beard is getting too old to stay up all night, and while you hate to admit it, it's true.

Please accept my heartfelt thanks for your efforts on behalf of this office. You were in no small way responsible for our success.

I would like to wish you and your wonderful family a very happy and prosperous New Year.

Sincerely,

WILLIAM R. MERRIAM.

EXCHANGE OF LETTERS SUBMITTED BY ITT TO THE COMMITTEE REGARDING
LEGAL REPRESENTATION FOR MRS. BEARD

WHITE OBERHANSLEY & FLEMING,
ATTORNEYS AT LAW,
715 Valley Federal Savings Building, 6842 Van Nuys Boulevard,
Van Nuys, Calif., March 11, 1972.

WASHINGTON, D.C., OFFICE, SUITE 1102 NATIONAL PRESS BUILDING,

14th and F Streets, NW., Washington, D.C.

HOWARD AIBEL, ESQ.

Senior Vice President and General Counsel, International Telephone and Telegraph Corp., New York, N.Y.

DEAR MR. AIBEL: This is to confirm our discussions by telephone relative to the following understanding:

1. This office is and will be representing Mrs. Dita Davis Beard as her independent counsel with regard to the present Kleindienst hearings which are the outcropping of certain alleged charges involving ITT and Mrs. Beard.

2. That we shall submit our billings to Mrs. Beard in care of ITT.

3. That ITT has agreed to assume our fees and out-of-pocket expenses for and on behalf of Mrs. Beard in the above matter. In this regard, our expenses may include travel, investigation services, telephone, lodging and meals, ground transportation and related costs.

4. In representing Mrs. Beard, we shall conduct ourselves solely as her independent counsel without any direction from ITT whatsoever.

This letter is being written to simply memorialize our understanding.

Very truly yours,

White, Oberhansley and Fleming.

DAVID W. FLEMING/gsh

DWF. gsh; Dictated by Telephone; Not Read.

WHITE, OBERHANSLEY & FLEMING,
ATTORNEYS AT LAW
715 Valley Federal Savings Building, 6842 Van Nuys Boulevard,
Van Nuys, Calif., March 11, 1972.

Mrs. Dita Davis Beard
(Care of I.T.T.).
New York, N.Y.

Attention of Howard Aibel, Esq., Senior Vice President and General Counsel.
Retainer, \$15,000 for professional services.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.,
320 PARK AVENUE,
New York N.Y., March 17, 1972.

HOWARD J. AIBEL; Senior Vice President and General Counsel.

DAVID W. FLEMING, ESQ.,
White, Oberhansley & Fleming,
Van Nuys, Calif.

DEAR MR. FLEMING: On my return to my office after my stay in Washington, I read your letter of March 11th, together with the attached bill. I have the following comments:

1. You are correct in your statement that we agreed that your firm is representing Mrs. Dita Davis Beard as her independent counsel with regard to the hearings on the confirmation of Richard Kleindienst, and that in representing Mrs. Beard, you are conducting yourselves solely as her independent counsel without any direction from ITT whatsoever.

2. In our conversation, I told you that ITT would assume the responsibility of paying reasonable legal fees. In connection with that agreement, it would reasonably follow that we would also pay out-of-pocket expenses which are reasonably related to the representation of Mrs. Beard. I agree that such expenses may include travel, telephone, lodging and meal expenses incurred while travelling and related costs. However, investigation services were neither the subject of our conversation nor are they a normal part of representation in a matter of this kind, and I would ask for further amplification of this matter.

3. While I am generally familiar with the services you have provided to Mrs. Beard, I am really not in a position to judge whether or not the retainer you have billed is a reasonable one in the circumstances of your representation. I would appreciate it if you would send me a brief letter setting forth in general terms the nature of the services, including perhaps, the amount of time which has been devoted to this matter, and the rate which you have charged for your time.

Very truly yours,

HOWARD AIBEL.

LETTER AND ENCLOSURES FROM JACK ANDERSON REGARDING POLYGRAPHIC
INTERVIEW

WASHINGTON, D.C., March 25, 1972.

HON. JAMES EASTLAND,
U.S. Senate,

DEAR MR. CHAIRMAN: The sworn statement issued March 17 by Mrs. Dita Beard through her lawyer and the Senate Republican Leader has raised the prospect that her testimony will conflict with that given before your Committee by my associate, Brit Hume. Accordingly, I have had Mr. Hume undergo a lie detector test by a registered polygraph examiner.

While polygraphs are not admissible in court proceedings, they are widely used by government agencies, including the Department of Justice itself, to determine the credibility of witnesses and employees. Therefore, I believe Mr. Hume's favorable performance on the test will be recognized by the Committee as evidence both of his good faith and his truthfulness. I respectfully request that the enclosed notarized report on the test be made part of the hearing record. I challenge Mrs. Beard and any other witness who contradicts Mr. Hume's testimony to undergo a similar examination.

A word about Lloyd Furr, the polygraph examiner. He has done polygraph tests for the United States District Court for the District of Columbia, for the Department of Justice in connection with Federal Grand Jury Proceedings and, earlier, for the old Senate Crime Committee under Senator Matthew Neely. He does extensive polygraph work for the major department stores in the Washington area.

If any questions should arise about this examination and Mr. Furr's conclusions, he is an experienced witness who would be well able to explain the intricacies of his examination to the Committee.

I also enclose, Mr. Chairman, an affidavit from Lawrence Taylor, a reporter for the St. Louis Post-Dispatch. He volunteered this information to us after Bernard Goodrich of ITT's Washington office issued a statement earlier this week tending to contradict Mr. Hume's testimony. I feel Mr. Taylor's affidavit is significant in light of what Mr. Goodrich has said since Mr. Hume's testimony. I respectfully request that it, too, be made part of the record.

If I, or Mr. Hume, can be of further help to the Committee, please do not hesitate to call upon us.

Sincerely,

JACK ANDERSON

cc: Hon. PHILIP HART.

LLOYD B. FURR,
McLean, Va., March 23, 1972.

Re Alexander Britton Hume, Polygraphic Interview, Opinions & Observations.

Mr. JACK ANDERSON,
Washington, D.C.

MR. ANDERSON: Pursuant to arrangements and agreement with Mr. Les Whitten the above, Alexander B. Hume, was interviewed and examined on the Polygraph (Lie Detector), a detection of deception technique, commencing about 9:25 A.M., on the above date.

The purpose of the examination is self-explanatory from the relevant questions. A two page list of twenty (20) questions or issues was presented to the undersigned examiner by Mr. Hume. The questions were discussed with Mr. Hume, then rephrased or worded by the Examiner to conform with standard polygraphic procedure.

The actual examination consisted of five (5) Polygrams (charts), and the relevant questions asked, some two or more times, are listed below. Mr. Hume was asked to answer the questions either "yes" or "no", and his answers appear in parenthesis.

A. Did you visit Dita Beard in the ITT Washington office, Wednesday, February 23, 1972? (Yes.)

B. Did you at that time show her the original copy of a memorandum on ITT stationery? (Yes.)

C. Did this memo purport to be written by Mrs. Beard to W. R. Merriam? (Yes.)

D. Was the memo you showed Mrs. Beard dated June 25, 1971? (Yes.)

E. Did you invite Mrs. Beard's comments on the memo? (Yes.)

F. Did Mrs. Beard deny to you that she had written the memo? (No.)

G. Did Mrs. Beard at any time during that first meeting say the memo was a forgery? (No.)

H. Did Mrs. Beard identify the penciled initial on the memo as "my own little 'D'?" (Yes.)

I. During this first meeting did Mrs. Beard review the memo with you to identify the persons mentioned therein? (Yes.)

J. Did you have a meeting with Mrs. Beard the following night at her home? (Yes.)

K. Did Mrs. Beard deny during this second meeting that she had written the memo? (No.)

L. Did Mrs. Beard explicitly confirm during this second meeting that she had written the memo? (Yes.)

M. Did Mrs. Beard tell you she had a meeting with Attorney General Mitchell last year, following the Kentucky Derby? (Yes.)

N. Did Mrs. Beard tell you that Mr. Mitchell brushed her off when she approached him about ITT's anti-trust cases? (No.)

O. Did Mrs. Beard tell you she and Mr. Mitchell discussed ITT's anti-trust cases? (Yes.)

P. Did Mrs. Beard tell you that Mr. Mitchell criticized her for lobbying she had done on the anti-trust cases? (Yes.)

Q. Did Mrs. Beard tell you that Mr. Mitchell said the President told him to make a reasonable settlement with ITT in these cases? (Yes.)

R. Did Mrs. Beard say that she and Mr. Mitchell reached a rough agreement whereby ITT would be allowed to keep the Hartford Insurance Co., and part of the Grinnell Company? (Yes.)

S. Did Mrs. Beard ever at any time tell you the memo was a forgery? (No.)

T. Did you go over the memo in detail with Mrs. Beard during your second meeting at her home? (Yes.)

U. To the best of your knowledge, have you answered all questions truthfully during this examination? (Yes)

V. Have you deliberately and intentionally lied to any questions during this Polygraph Examination? (No)

OPINIONS AND OBSERVATIONS

1. On the first Polygram specific responses were noted to questions, A, B, C and very specific responses on question E. On later charts an absence of responses was noted on questions A, B, and C, however subject continued to respond from "slight to specific" on question E. Mr. Hume was advised with respect to why question E continued to disturb him, and he stated he could not understand because the definite and specific purpose of his visits with Mrs. Beard were to discuss the memo and invite her comments.

2. Some responses or reactions were also noted on relevant questions, G, K, O, Q and S, but final analysis of these questions comparing their "slight" responses to the very specific responses to question E, and the responses on the first chart to questions A, B and C, it is the opinion of this Examiner, the "very light or slight" responses on G, K, O, Q and S, would be of no consequences, and thus the Examiner is of the further opinion his answers to said questions were truthful.

3. No particular deception was noted on the other relevant questions, F, H, I, J, L, M, N, P, R, T, U and V.

4. Some response and physical movement was noted to question M, on chart three, but the Examiner in the question referred to Mr. Mitchell as General Mitchell. The question was repeated on the next chart referring to him as Attorney General Mitchell, and no response or deception at all was recorded.

5. This Examiner has no definite answer for subjects continued reactions and responses to question E, other than he may have been concerned and bothered because the Examiner questioned him specifically about same following the first chart.

6. After complete analysis of all five charts, and comparing specific responses to some questions, no responses to the same questions when asked again, slight to no responses to several other questions, and the absence of any responses to all relevant questions mention in paragraph 3 above, it is the opinion of this Examiner, this subject, Mr. Hume answered the questions truthfully, and satisfactorily "passed the examination."

Respectfully submitted,

LLOYD B. FURR, *Examiner.*

Personally appeared before me Lloyd B. Furr this 24th day of March 1972.

Notary Public, Fairfax County, Va.

My commission expires April 2, 1975.

AFFIDAVIT OF LAWRENCE E. TAYLOR, MARCH 21, 1972

I am Lawrence E. Taylor, a Washington Correspondent of the St. Louis Post-Dispatch. I reside at 3530 Quesada street, Northwest, Washington, D.C.

On March 9, 1972, I heard Brit Hume testify before the Senate Judiciary Committee. Among other things, Mr. Hume told of interviewing Mrs. Dita D. Beard, an employee of International Telephone and Telegraph Corporation. Mr. Hume said that on February 23, 1972, he talked with Mrs. Beard in the presence of two other ITT employees, Bernard A. Goodrich and John V. Horner. Mr. Hume testified that he showed Mrs. Beard a memorandum and that she acknowledged the memo was authentic and identified her initial on the document as her "own little 'd'."

When the hearing recessed about noon on March 9, I approached Mr. Goodrich in the spectators' section of the hearing room and asked him if he had heard Mr. Hume's testimony. Mr. Goodrich replied that he had. I then asked Mr. Goodrich if Mr. Hume's testimony was correct as to the interview with Mrs. Beard at which he was present. Mr. Goodrich said that it was. I asked Mr. Goodrich if Mr. Hume had omitted any significant facts from his testimony. Mr. Goodrich said Mr. Hume had not. That ended my conversation with Mr. Goodrich.

LAWRENCE E. TAYLOR.

Subscribed and sworn to before me this day 21 March, 1972.

KATIE HARRISON GARLOCK.

My Commission Expires June 14, 1976.

Senator HART. Finally, for the Chair, may I ask for the report which has been described and discussed today, the document analysis

and examination of the Beard memorandum prepared by two experts for ITT?

Mr. GILBERT. Yes, sir, do you want that now?

Senator HART. You can leave it with the staff, yes. It will be made a part of the record.

Mr. GILBERT. Yes, sir.

Senator HART. It being 4 o'clock—

Mr. GILBERT. Sir, there are two—one is by the Tytells and the other is by Dr. McCrone—reports.

Senator HART. These two documents are the reports that we have talked about, is that right?

Mr. GILBERT. The report of the experts?

Senator HART. Yes.

Mr. GILBERT. There are two reports, one from Mr. and Mrs. Tytell's firm, the other from Dr. McCrone. We have given them both to the gentleman.

(The reports referred to follow:)

REPORT ON QUESTIONED DOCUMENT FOR INTERNATIONAL TELEPHONE & TELEGRAPH, CORP. NEW YORK, N.Y.

SUBMITTED BY PEARL L. TYTELL, 116 FULTON STREET, NEW YORK, N.Y.

MARCH 27, 1972

I. DOCUMENT IN QUESTION

A two-page typewritten memorandum to W. R. Merriam from D. D. Beard, dated June 25, 1971.

II. PURPOSES OF THE EXAMINATION

1. To identify the typewriter on which the questioned document was typed.
2. To study the paper used in the letterhead page of the questioned document.
3. To verify the dating of the questioned document.
4. To determine the authenticity of the handwritten initial "D" in the questioned document.

III. STANDARDS EXAMINED

The following original memoranda were located and were used as standards:

To—	From—	Date
W. R. Merriam	B. C. Willis	June 2, 1971
Keith Perkins	D. D. Beard	Do.
W. R. Merriam	R. V. O'Brien	¹ June 23, 1971
Do.	D. D. Beard	June 25, 1971
Do.	T. M. Joyce	¹ June 28, 1971
Do.	B. C. Willis	Do.
W. R. Merriam, R. L. Schmidt	T. M. Joyce	¹ June 30, 1971
R. C. Miles	do	July 9, 1971
R. L. Schmidt	do	July 15, 1971
Jack Fitzpatrick	do	July 29, 1971
Jim Dalglish	do	Do.
W. R. Merriam	B. C. Willis	¹ July 30, 1971
Do.	do	Aug. 3, 1971
Len Einnemer	Bert C. Willis	Aug. 4, 1971
W. R. Merriam	W. R. Evans	Dec. 2, 1971
Dear Member	W. Ronald Evans	Dec. 22, 1971
W. R. Merriam	T. M. Joyce	¹ Jan. 25, 1972
R. L. Schmidt	do	Do.
W. R. Merriam	do	¹ Feb. 18, 1972

¹ 2 pages.

NATURE OF THE EXAMINATION

A photocopy of the questioned document was initially presented for examination, and the original was subsequently examined. The typewriter used to type the questioned document was identified by make and type design.

Machines of the same make and type design were located in the ITT office in Washington, D.C., and the specific typewriter used was identified. Specimens were prepared on this machine and compared with the questioned document for individual characteristics of alignment and type defects.

The files of ITT were then searched for material typed on the same machine. Materials dated June 2, 1971, to February 18, 1972, were examined and identified as having been typed on the machine that typed the questioned document. Originals of such material were requested and standards were thus obtained.

The questioned document and the standards were examined utilizing the microscope, light magnifier, overlay plates and ultra-violet illumination. Attention was directed to the chronological sequence of the documents.

V. FINDINGS

Finding 1:

The questioned document was typed on I.B.M. C13-2067756 type designation PE, 1/32 unit proportional spacing, 29-tooth ratchet, non-reversible ribbon, as were all of the standards listed above.

Deviations from normal, or defects occurring in or affecting:

- type face
- horizontal alignment
- vertical alignment
- slant
- tilt

serve to individualize typewriting.

Among the identifying characteristics of this I.B.M. typewriter are:

- a. Lower case "i" has a damaged serif on the left.
- b. Lower case "w" prints to the left and the right serif is defective.
- c. Lower case "s" prints lighter at the top.
- d. Lower case "g" prints to the right.
- e. Lower case "v" prints to the right.
- f. Lower case "a" has a shifting alignment.
- g. Lower case "q" is low.
- h. Upper case "T" has a rounded serif on the right.
- i. Upper case "W" often prints lighter on the left.

Finding 2:

The first page of the questioned document was typed on ITT letterhead paper bearing the watermark (GILBERT BOND 25% Cotton. The second page of the questioned document was typed on a blank sheet, bearing the watermark Eagle A Trojan Bond 25% Cotton Fiber U S A. The standards (other than Evans to Dear Member, December 22, 1971) were typed on paper bearing watermarks of the same manufacturer. The ITT letterhead used in page one of the questioned document did not come into use until June, 1971. At the time of the examinations, a supply of letterheads with this watermark design was in the paper holder at the desk where the I.B.M. machine referred to above was located.

Under ultra-violet light the fluorescence of the questioned document is not the same as that of the June 23, 25 and 28, 1971, standards. Paper is produced in batches on the same "run." The difference in fluorescence indicates that the letterhead on the questioned document originated from a run different from that of the June 23, 25 and 28, 1971, standards. Some time interval, long or short, intervened between the different runs of paper production.

Finding 3:

The ribbons used for both the questioned document and the standards were of the non-rewindable, single-use type. Such ribbons are coated film, produced by a limited number of manufacturers, and the basic formulas are similar.

There are frequent visual differences in the writing produced by different ribbons. The questioned document, when compared to the June 23, 25 and 28, 1971, standards, shows such a visual difference. The writing is lighter and thinner than is the writing of the other standards. In assessing the intensity of the ribbon, the factor of pressure control was taken into account by an examination of the embossing on the reverse side of the documents. Paper chromatography tests may not show visual differences that are apparent to visual observation. While chromatology tests demonstrate chemical similarities, they do not establish identity of the ribbon; nor do they negate the differences revealed by visual examination, microscopic or gross. This finding, along with the difference in paper, places the questioned document out of the chronological sequence established by the standards.

Any alteration through handling of the document over a period of time would not affect this finding. There is no evidence of such intrinsic alteration in the document.

A precise dating of the questioned document is not possible because of the chronological gap in the standards located.

The "write" (i.e., the impression made through the ribbon on the paper) of the ribbon used in typing the standards of June 23, 25 and 28, 1971, are generally similar. However, they differ markedly from the "write" appearing in the questioned document. It takes a period of 6 to 8 hours of constant typing by a skilled typist without rest or respite to consume one non-rewindable ribbon of the shortest commercial ribbon length (i.e., approximately 850 feet) used on the typewriter on which the questioned document was typed. That leads to the conclusion that the questioned document was not typed in the ordinary course of business on June 25, 1971. The "write" of the questioned document is markedly different from the "write" of all of the standards subsequent to June 25, 1971, except that it does resemble the "write" of the Joyce to Schmidt standard of January 25, 1972.

Finding 4:

The penciled initial "D" in the heading of the questioned document is too isolated a sample of handwriting for a positive identification.

VI. CONCLUSIONS

1. The questioned memorandum was typed on I.B.M. C13-2067756, located in the I.T.T. Office in Washington, D.C.

2. The paper of the letterhead page of the questioned document differs from the paper of the June 23, 25 and the June 28, 1971, standards.

3. A precise dating of the questioned memorandum is not possible. The questioned document could not have been typed in the ordinary course of business on June 25, 1971. The type impression of the questioned document is markedly different from and inconsistent with all the standards subsequent to June 25, 1971, except that it does resemble the Joyce to Schmidt January 25, 1972, standard.

4. The penciled initial "D" in the heading of the questioned document is too isolated a sample of handwriting for a positive identification.

Respectfully submitted.

PEARL L. TYTELL

March 27, 1972.

—

Report to International Telephone & Telegraph Corp., 320 Park Avenue,
New York, N.Y.

MICROANALYTICAL STUDY OF BEARD MEMORANDUM (JUNE 25, 1971) to W. R.
MERRIAM, MA PROJECT No. 2618

SUBMITTED BY WALTER C. MCCRONE ASSOCIATES, INC., 493 EAST 31ST STREET, CHICAGO,
ILL. 60616, 27 MARCH 1972

I. INTRODUCTION

On Tuesday, March 21, Mr. De Forest Billyou, Assistant General Counsel for ITT, visited the McCrone Associates laboratory in Chicago to discuss document examination. He was accompanied by Martin and Pearl Tytell, international authorities in this specialized area. McCrone Associates was represented by Walter and Lucy McCrone and Geoffrey Woodard (McCrone Associates, London).

After preliminary background discussion, the meeting began with the Tytell's pointing out variations in paper and typed impressions they had observed between several documents. They had already identified the typewriter used and established that all of the documents had been typed on the same typewriter on ITT letterhead bond paper. After both microscopical and visual examination we were able to fully confirm their observations. Mr. Billyou then asked if we felt any of our microanalytical techniques would also characterize this difference. We suggested paper chromatography and microprobe analysis as the most likely to be successful.

We were then authorized to perform the necessary tests and to remove small portions (usually 4-5 typed letters or numbers) from any of the documents.

A chronological listing of the documents examined includes the following:

June 2, 1971; Memo Willis to Merriam on "No Fault Insurance".

June 2, 1971; Memo Beard to Perkins on "Congressman Van Deerlin . . .".

June 23, 1971; Memo O'Brien to Merriam, untitled but first paragraph begins "The early part of . . .".

June 25, 1971; Memo Beard to Merriam, untitled but first paragraph originally began "I have been . . .".

June 28, 1971; Memo Joyce to Merriam, untitled but handwritten correction begins "Research in this . . .".

June 28, 1971; Memo Willis to Merriam, untitled but first paragraph begins "Activities center . . .".

July 29, 1971; Memo Joyce to Dagliesh, titled "Tuition Assistance".

August 3, 1971; Memo Willis to Merriam, titled "MNC Action in Congressional Record".

December 2, 1971; Memo Evans to Merriam, titled "Hartford Letter 11/10/71—attached memo."

December 22, 1971; Letter by Evans-addressed "Dear Member" (same typewriter, different letterhead).

January 25, 1972; Memo Joyce to Merriam, titled "EEOC".

January 25, 1972; Memo Joyce to Schmidt, titled "Minimum Wage", Page one.

January 25, 1972, Memo Joyce to Schmidt, titled "Minimum Wage", Page two.

February 18, 1972; Memo Joyce to Merriam, titled "Minimum Wage".

These documents were available for comparison with a document whose authenticity was in question. This document was to be made available to us if necessary. It was characterized as follows:

Questioned Document dated June 25, 1971, Memo Beard to Merriam, titled "San Diego Convention".

II. OBJECTIVE

The objective of this study was defined as dating of the June 25, 1971 memo from Beard to Merriam by comparing this questioned document (Q.D.) with the comparison documents available to us.

III. DISCUSSION OF THE ANALYTICAL METHODS

Based on the Tytell's observation of the unique appearance of the typed impressions for the Q.D. (which we have confirmed independently), we felt the composition of the typewriter ribbon inks might be sufficiently different so that documents typed at similar times could be differentiated from documents typed at other times. Paper chromatography and microprobe analysis were chosen to make this differentiation because each measures variations in ink composition.

A. Paper chromatography

All inks contain a variety of compounds added by the manufacturer to give the ink color, body, stability, flow characteristics, permanence etc. The nature and amount of these constituents uniquely characterize each manufacturer's product. An ink formula is often changed by the manufacturer in order to improve quality or cut costs. For this reason inks can sometimes be dated quite precisely.

A quick way to characterize and compare inks is by paper chromatography. To do this a solvent for the constituents of the ink is used to extract these compounds and to conduct them along an absorbent paper surface. Each soluble constituent usually varies in its solubility and its affinity for paper fibers. As a result, each constituent travels in the flowing solvent along the paper at a different rate. A series of separate bands, each a different chemical compound, are formed on the paper. These bands are often colored but various techniques are available to make uncolored ones visible, *e.g.*, ultraviolet fluorescence, chemical staining or spectrophotometry. The final pattern of bands is characteristic of the ink sample and may be used for comparison of inks.

B. Microprobe analysis

During recent years a variety of very sensitive microanalytical instruments has been developed for use in the space program and other highly sophisticated projects. As these instruments became generally available, they greatly increased the ability of chemists to characterize, identify and compare substances of all types.

A microprobe is an instrument that bombards a very small sample, often invisible to the eye, with light (visible, infrared, ultraviolet or x-ray) or particles (electrons, protons, alpha particles or ions). Under this bombardment, the sample itself gives off radiation or particles characteristic of its chemical composition. Emission of either particles or radiation can be measured and recorded as a "fingerprint" for that particular sample. One of the most useful of these probes

is the electron microprobe. X-rays characteristic of the elements in a very tiny sample are measured as a focused beam of electrons strikes the sample. In other probes a laser beam excites other spectral lines that can be measured or a focused beam of ions sputters constituent ions from the sample. The laser probe utilizes a spectrophotometer to identify the constituents of the sample; the ion probe relies on a mass spectrometer.

IV. RESULTS OF THIS STUDY

The entire group of reference documents and the questioned document were studied by paper chromatography; a selected group of eight of these by microprobe.

A. Paper chromatography

A suitable solvent pair, acetone followed by chloroform, was found which gave a reasonable extraction and separation of the ribbon ink components. The inks were found to contain few extractable components, hence detailed comparisons were difficult. There is evidence, however, that at least four different ink formulations have been used for typing the documents examined.

The results of this study (Table I) show that the Q.D. could have been typed at any time on, before or after the alleged date, June 25, 1971. The type of ribbons used in June were also in use on August 3 and no documents covering the period September through November were available. It is likely that the observed mixing of ribbon compositions during the past nine-ten months reflects a changing supply and the storage of small numbers of rolls by individual secretaries in their own desks for long periods of time. Paper chromatography is only one method of analysis. In this instance, one cannot conclude from this paper chromatography data that the Q.D. was typed on June 25, 1971.

B. Microprobe analyses

It was hoped that the more versatile and sensitive microprobes would make possible more definite conclusions. Although it is not possible in this report to give all of the details of this study, we feel that Tables II and III give sufficient data on each of eight documents to be able to say which were typed with similar ribbons. Note, however, that we are measuring quite different composition parameters with the microprobe as compared with paper chromatography. Any conflict between the data from these two procedures must be resolved in favor of the microprobe. The latter is far more sensitive and far more definitive.

Table II gives microprobe data on the papers (not the inks) used in eight of the documents including the Q.D. These data show that paper manufacturers do not hold rigorously to an exact formula in manufacturing paper. The percentages given are of the coating filler, a small portion of the total paper weight but a criterion for comparing papers from different lots manufactured by a given paper mill. The significant finding here is the presence of a small amount of barium sulfate in the Q.D. paper coating. Only the February 18, 1972 document shows any of this component.

TABLE I.—PAPER CHROMATOGRAPHY

Document	Color	Conclusions
June 2, Joyce to Merriam	Blue	Probably same ribbon composition.
June 2, Beard to Perkins	do.	
June 23, O'Brien to Merriam	do.	
June 25, Q. D. p. 1	do.	
June 25, Q.D. p. 2	do.	
June 25, Beard to Merriam	do.	
June 28, Joyce to Merriam	do.	
June 28, Willis to Merriam	do.	
July 29, Joyce to Dagliesh	Magenta No. 1	Different from June.
Aug. 3, Willis to Merriam	Blue	Probably same as June.
Dec. 2, Evans to Merriam	Magenta No. 1	Probably same as July 29.
Dec. 22, Evans letter	do.	Do.
Jan. 25, Joyce to Merriam	Magenta No. 2	Probably different from July 29.
Jan. 25, Joyce to Schmidt, p. 1	Magenta No. 1	Probably same as July 29.
Jan. 25, Joyce to Schmidt, p. 2	do.	Do.
Feb. 18, Joyce to Merriam	Magenta No. 2 or No. 3	Probably different from July 29, perhaps also different from Jan. 25.

TABLE II.—MICROPROBE DATA ON DOCUMENT PAPERS

Coating component	Relative percentage (in paper coating)							
	June 2, 1971 (J to M)	June 25, 1971 (B to M)	Q.D. (B to M)	June 28, 1971 (J to M)	Aug. 3, 1971 (W to M)	Jan. 25, 1972 (J to M)	Jan. 25, 1972 (J to S)	Feb. 18, 1972 (J to M)
Clays.....	65	36	35	50	45	40	42	35
Limestone.....	12	40	5	25	12	15	15	20
TiO ₂	6	4	5	13	18	15	18	15
ZnO.....	17	20	15	12	25	30	28	20
BaSO ₄	0	0	40	0	0	0	0	10

Barium sulfate is often used in papers; it is regarded as equivalent in function to limestone, clays etc. but its presence in the Q.D. sheet makes it impossible for that sheet to have been produced at the same time as any other document sheet studied by us (Table II) using this technique other than the February 18, 1972 standard. It is different, therefore, from the sheet used for the comparison document (June 25, 1971, untitled memo Beard to Merriam) typed allegedly on the same date as the Q.D.

The inks from eight of these documents were also studied by microprobe.

TABLE III.—MICROPROBE DATA

Document	Measured parameters		
	A	B	C
June 2, 1971 (Joyce to Merriam).....	170	55	1.2
June 25, 1971 (Beard to Merriam).....	368	58	.8
Q.D.	145	38	1.2
June 28, 1971 (Joyce to Merriam).....	152	42	1.3
Aug. 3, 1971 (Willis to Merriam).....	573	80	.9
Jan. 25, 1972 (Joyce to Schmidt).....	185	52	1.2
Jan. 25, 1972 (Joyce to Merriam).....	490	89	.7
Feb. 18, 1972 (Joyce to Merriam).....	39	100	.7

The parameters, A-C, are composition dependent measurements based on absolute (A and B) and relative (C) intensities of specific microprobe emissions. These data show how each ink compares with the other seven. If the same ink formulation were involved in typing of two documents, the three measurements should be close together. If the same ribbon were used to type two documents, the three measurements should be similar to within a few percent. Inks from different manufacturers should be distinctly different and inks from the same manufacturer should change with time either as a result of formula changes or due to aging.

It is apparent from the data in Table III that the Q.D. ink is quite similar to inks used on June 2, 1971, June 28, 1971 and January 25, 1972. Furthermore, the Q.D. ink is very different from the ink used on the June 25, 1971 document, typed on the same typewriter and purportedly on the same day. The divergence in the data for the two January 25, 1972 documents indicates a ribbon change on that date. We consider it the likeliest conclusion that the Q.D. was typed in 1972.

V. CONCLUSION

We feel that the Q.D. and the documents dated June 2 and June 28, 1971 and January 25, 1972 were typed with very similar ribbons. Furthermore, the Q.D. and the June 25, 1971 document could not have been typed with the same or a similar ribbon.

This establishes that the Q.D. could have been typed at least as recently as January 25, 1972. Considering all of the data, including the visual and microscopical comparisons by the Tytells (which we have confirmed independently) and the distinctness of the paper described above, we consider it the likeliest conclusion that the Q.D. was typed in 1972. This is true because our work and the Tytell's comparisons lead to like conclusions only with respect to two matters:

1. The Q.D. is not similar to the compared document dated June 25, 1971 (B to M); and
2. The Q.D. is similar to the comparison document typed January 25, 1972 (J to S).

With respect to all other examined compared documents, our data and the Tytell's data are inconsistent and in accordance with usual procedures we must accept as likely conclusions only those which are supported by both approaches. This leads to the conclusion stated above that the Q.D. was probably typed sometime in 1972.

Respectfully submitted,

WALTER C. McCrone,
Senior Scientist.

Senator HART. Thank you.

We will recess now at the call of the Chair; also, if I may add, at the direction of the chairman.

(Whereupon, at 4 p.m., the hearing was recessed, subject to the call of the Chair.)

(The committee subsequently determined to reconvene on Monday, April 10, 1972.)



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